
HOUSE BILL 3176

State of Washington

61st Legislature

2010 Regular Session

By Representatives Hunter, Hasegawa, Ericks, Conway, Springer, Hunt, Darneille, Williams, Upthegrove, White, Roberts, Appleton, Nelson, Carlyle, and Ormsby

Read first time 02/04/10. Referred to Committee on Finance.

1 AN ACT Relating to increasing state revenues to preserve funding
2 for education, public safety, health care, and safety net services for
3 elderly, disabled, and vulnerable people by preventing abusive tax
4 avoidance transactions, narrowing or eliminating certain tax
5 preferences, and providing equitable tax treatment; amending RCW
6 82.04.220, 82.04.2907, 82.04.460, 82.32.090, 82.12.020, 82.45.033,
7 82.45.070, 82.45.080, 82.45.100, 82.45.220, 43.07.390, 82.04.4292,
8 82.04.423, 82.04.4266, 82.04.250, 82.04.250, 82.04.298, 82.04.334,
9 82.04.4463, 82.08.806, 82.32.545, 82.32.550, 82.32.630, 82.32.632,
10 82.45.195, 35.102.150, 48.14.080, 82.48.010, 82.48.020, 82.48.030,
11 82.48.070, 82.48.080, 82.48.110, 82.16.050, 82.12.0254, 82.45.010,
12 82.45.080, and 82.32.145; reenacting and amending RCW 82.04.260,
13 82.04.261, 82.04.440, 82.04.360, and 82.45.010; adding new sections to
14 chapter 82.04 RCW; adding new sections to chapter 82.32 RCW; adding a
15 new section to chapter 82.08 RCW; adding a new section to chapter 82.12
16 RCW; adding a new section to chapter 82.48 RCW; adding a new section to
17 chapter 82.16 RCW; creating new sections; repealing RCW 82.08.0273,
18 82.04.062, 82.08.890, 82.12.890, and 82.04.44525; providing effective
19 dates; providing an expiration date; and declaring an emergency.

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

2 **PART I**

3 **Minimum Nexus Standards**

4 NEW SECTION. **Sec. 101.** (1) The legislature finds that out-of-
5 state businesses that do not have a physical presence in Washington
6 earn significant income from Washington residents from providing
7 services or collecting royalties on the use of intangible property in
8 this state. The legislature further finds that these businesses
9 receive significant benefits and opportunities provided by the state,
10 such as: Laws providing protection of business interests or regulating
11 consumer credit; access to courts and judicial process to enforce
12 business rights, including debt collection and intellectual property
13 rights; an orderly and regulated marketplace; and police and fire
14 protection and a transportation system benefiting in-state agents and
15 other representatives of out-of-state businesses. Therefore, the
16 legislature intends to extend the state's business and occupation tax
17 to these companies to ensure that they pay their fair share of the cost
18 of services that this state renders and the infrastructure it provides.

19 (2)(a) The legislature also finds that the current cost
20 apportionment method in RCW 82.04.460(1) for apportioning most service
21 income has been difficult for both taxpayers and the department to
22 apply due in large part (i) to the difficulty in assigning certain
23 costs of doing business inside or outside of this state, and (ii) to
24 its dissimilarity with the apportionment methods used in other states
25 for their business activity taxes.

26 (b) The legislature further finds that there is a trend among
27 states to adopt a single factor apportionment formula based on sales.
28 The legislature recognizes that adoption of a sales factor only
29 apportionment method has the advantages of simplifying apportionment
30 and making Washington a more attractive place for businesses to expand
31 their property and payroll. For these reasons, the legislature adopts
32 single factor sales apportionment for purposes of apportioning royalty
33 income and certain service income.

34 (c) Nothing in this act may be construed, however, to authorize
35 apportionment of the gross income or value of products taxable under
36 the following business and occupation tax classifications: Retailing,

1 wholesaling, manufacturing, processing for hire, extracting, extracting
2 for hire, printing, government contracting, public road construction,
3 the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any
4 other activity not specifically included in the definition of
5 apportionable activities in RCW 82.04.460.

6 **Sec. 102.** RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended
7 to read as follows:

8 (1) There is levied and ((shall be)) collected from every person
9 that has substantial nexus with this state a tax for the act or
10 privilege of engaging in business activities. ((Such)) The tax ((shall
11 be)) is measured by the application of rates against value of products,
12 gross proceeds of sales, or gross income of the business, as the case
13 may be.

14 (2) A person who has substantial nexus with this state in any tax
15 year will be deemed to have substantial nexus with this state for the
16 following four tax years.

17 NEW SECTION. **Sec. 103.** A new section is added to chapter 82.04
18 RCW to read as follows:

19 "Engaging within this state" and "engaging within the state," when
20 used in connection with any apportionable activity as defined in RCW
21 82.04.460, means that a person generates gross income of the business
22 from sources within this state, such as customers or intangible
23 property located in this state, regardless of whether the person is
24 physically present in this state.

25 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.04
26 RCW to read as follows:

27 (1) A person engaging in business is deemed to have substantial
28 nexus with this state if the person is:

29 (a) An individual and is a resident or domiciliary of this state;

30 (b) A business entity and is organized or commercially domiciled in
31 this state; or

32 (c) A nonresident individual or a business entity that is organized
33 or commercially domiciled outside this state, and in any tax year the
34 person has:

35 (i) More than fifty thousand dollars of property in this state;

1 (ii) More than fifty thousand dollars of payroll in this state;
2 (iii) More than five hundred thousand dollars of receipts from this
3 state; or
4 (iv) At least twenty-five percent of the person's total property,
5 total payroll, or total receipts in this state.

6 (2)(a) Property counting toward the thresholds in subsection
7 (1)(c)(i) and (iv) of this section is the average value of the
8 taxpayer's property, including intangible property, owned or rented and
9 used in this state during the tax year.

10 (b)(i) Property owned by the taxpayer, other than loans and credit
11 card receivables owned by the taxpayer, is valued at its original cost
12 basis. Loans and credit card receivables owned by the taxpayer are
13 valued at their outstanding principal balance, without regard to any
14 reserve for bad debts. However, if a loan or credit card receivable is
15 charged off in whole or in part for federal income tax purposes, the
16 portion of the loan or credit card receivable charged off is deducted
17 from the outstanding principal balance.

18 (ii) Property rented by the taxpayer is valued at eight times the
19 net annual rental rate. For purposes of this subsection, "net annual
20 rental rate" means the annual rental rate paid by the taxpayer less any
21 annual rental rate received by the taxpayer from subrentals.

22 (c) The average value of property must be determined by averaging
23 the values at the beginning and ending of the tax year; but the
24 department may require the averaging of monthly values during the tax
25 year if reasonably required to properly reflect the average value of
26 the taxpayer's property.

27 (d)(i) For purposes of this subsection (2), loans and credit card
28 receivables are deemed owned and used in this state as follows:

29 (A) Loans secured by real property, personal property, or both real
30 and personal property, are deemed owned and used in the state if the
31 real property or personal property securing the loan is located within
32 this state. If the property securing the loan is located both within
33 this state and one or more other states, the loan is deemed owned and
34 used in this state if more than fifty percent of the fair market value
35 of the real or personal property is located within this state. If more
36 than fifty percent of the fair market value of the real or personal
37 property is not located within any one state, then the loan is deemed
38 owned and used in this state if the borrower is located in this state.

1 The determination of whether the real or personal property securing a
2 loan is located within this state must be made, as of the time the
3 original agreement was made, and any and all subsequent substitutions
4 of collateral must be disregarded.

5 (B) Loans not secured by real or personal property are deemed owned
6 and used in this state if the borrower is located in this state.

7 (C) Credit card receivables are deemed owned and used in this state
8 if the billing address of the cardholder is in this state.

9 (ii) The definitions in section 106 of this act apply to this
10 subsection.

11 (e) Notwithstanding anything else to the contrary in this
12 subsection, property counting toward the thresholds in subsection
13 (1)(c)(i) and (iv) of this section does not include a person's
14 ownership of, or rights in, computer software as defined in RCW
15 82.04.215, including computer software used in providing a digital
16 automated service; master copies of software; and digital goods and
17 digital codes residing on servers located in this state.

18 (3)(a) Payroll counting toward the thresholds in subsection
19 (1)(c)(ii) and (iv) of this section is the total amount paid by the
20 taxpayer for compensation in this state during the tax year plus
21 nonemployee compensation paid to representative third parties in this
22 state. Nonemployee compensation paid to representative third parties
23 includes the gross amount paid to nonemployees who represent the
24 taxpayer in interactions with the taxpayer's clients and includes sales
25 commissions.

26 (b) Compensation is paid in this state if the compensation is
27 properly reportable to this state for unemployment compensation tax
28 purposes, regardless of whether the compensation was actually reported
29 to this state.

30 (c) Nonemployee compensation is paid in this state if the service
31 performed by the representative third party occurs entirely or
32 primarily within this state.

33 (d) For purposes of this subsection, "compensation" means wages,
34 salaries, commissions, and any other form of remuneration paid to
35 employees and defined as gross income under 26 U.S.C. Sec. 61 of the
36 federal internal revenue code of 1986, as existing on July 1, 2010.

37 (4) Receipts counting toward the thresholds in subsection

1 (1)(c)(iii) and (iv) of this section are those amounts included in the
2 numerator of the receipts factor under sections 105 and 106 of this
3 act.

4 (5)(a) Each December, the department must review the cumulative
5 percentage change in the consumer price index. The department must
6 adjust the thresholds in subsection (1)(c)(i) through (iii) of this
7 section if the consumer price index has changed by five percent or more
8 since the later of July 1, 2010, or the date that the thresholds were
9 last adjusted under this subsection. For purposes of determining the
10 cumulative percentage change in the consumer price index, the
11 department must compare the consumer price index available as of
12 December 1st of the current year with the consumer price index as of
13 the later of July 1, 2010, or the date that the thresholds were last
14 adjusted under this subsection. The thresholds must be adjusted to
15 reflect that cumulative percentage change in the consumer price index.
16 The adjusted thresholds must be rounded to the nearest one thousand
17 dollars. Any adjustment will apply to tax periods that begin after the
18 adjustment is made.

19 (b) As used in this subsection, "consumer price index" means the
20 consumer price index for all urban consumers (CPI-U) available from the
21 bureau of labor statistics of the United States department of labor.

22 (6) Notwithstanding anything to the contrary in this section, a
23 person is not subject to taxes imposed under this chapter on any
24 activity not included in the definition of apportionable activities in
25 RCW 82.04.460, unless the person has a physical presence in this state,
26 which need only be demonstrably more than a slightest presence. For
27 purposes of this subsection, a person is physically present in this
28 state if the person has property or employees in this state or the
29 person, either directly or through an agent or other representative,
30 engages in activities in this state that are significantly associated
31 with the person's ability to establish or maintain a market for its
32 products in this state.

33 NEW SECTION. **Sec. 105.** A new section is added to chapter 82.04
34 RCW to read as follows:

35 (1) The apportionable income of a person within the scope of RCW
36 82.04.460(1) is apportioned to Washington by multiplying its
37 apportionable income by the receipts factor. Persons who are subject

1 to tax under more than one of the tax classifications enumerated in RCW
2 82.04.460(3)(a) (i) through (ix) must calculate a separate receipts
3 factor for each tax classification that the person is taxable under.

4 (2) For purposes of subsection (1) of this section, the receipts
5 factor is a fraction and is calculated as provided in subsections (3)
6 and (4) of this section and section 106 of this act.

7 (3)(a) The numerator of the receipts factor is the total gross
8 income of the business of the taxpayer attributable to this state
9 during the tax year from engaging in an apportionable activity. The
10 denominator of the receipts factor is the total gross income of the
11 business of the taxpayer from engaging in an apportionable activity
12 everywhere in the world during the tax year.

13 (b) Except as otherwise provided in this section, for purposes of
14 computing the receipts factor, gross income of the business generated
15 from each apportionable activity is attributable to the state:

16 (i) Where the customer received the benefit of the taxpayer's
17 service or, in the case of gross income from royalties, where the
18 customer used the taxpayer's intangible property.

19 (ii) If the customer received the benefit of the service or used
20 the intangible property in more than one state, gross income of the
21 business must be attributed to the state in which the benefit of the
22 service was primarily received or in which the intangible property was
23 primarily used.

24 (iii) If the taxpayer is unable to attribute gross income of the
25 business under the provisions of (b)(i) or (ii) of this subsection (3),
26 gross income of the business must be attributed to the state from which
27 the customer ordered the service or, in the case of royalties, the
28 office of the customer from which the royalty agreement with the
29 taxpayer was negotiated.

30 (iv) If the taxpayer is unable to attribute gross income of the
31 business under the provisions of (b)(i), (ii), or (iii) of this
32 subsection (3), gross income of the business must be attributed to the
33 state to which the billing statements or invoices are sent to the
34 customer by the taxpayer.

35 (v) If the taxpayer is unable to attribute gross income of the
36 business under the provisions of (b)(i), (ii), (iii), or (iv) of this
37 subsection (3), gross income of the business must be attributed to the
38 state from which the customer sends payment to the taxpayer.

1 (vi) If the taxpayer is unable to attribute gross income of the
2 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
3 this subsection (3), gross income of the business must be attributed to
4 the state where the customer is located as indicated by the customer's
5 address: (A) Shown in the taxpayer's business records maintained in
6 the regular course of business; or (B) obtained during consummation of
7 the sale or the negotiation of the contract for services or for the use
8 of the taxpayer's intangible property, including any address of a
9 customer's payment instrument when readily available to the taxpayer
10 and no other address is available.

11 (vii) If the taxpayer is unable to attribute gross income of the
12 business under the provisions of (b)(i), (ii), (iii), (iv), (v), or
13 (vi) of this subsection (3), gross income of the business must be
14 attributed to the commercial domicile of the taxpayer.

15 (viii) For purposes of this subsection (3)(b), "customer" means a
16 person or entity to whom the taxpayer makes a sale or renders services
17 or from whom the taxpayer otherwise receives gross income of the
18 business. "Customer" includes anyone who pays royalties or charges in
19 the nature of royalties for the use of the taxpayer's intangible
20 property.

21 (c) Gross income of the business from engaging in an apportionable
22 activity must be excluded from the denominator of the receipts factor
23 if, in respect to such activity, at least some of the activity is
24 performed in this state, and the gross income is attributable under (b)
25 of this subsection (3) to a state in which the taxpayer is not taxable.
26 For purposes of this subsection (3)(c), "not taxable" means that the
27 taxpayer is not subject to a business activities tax by that state,
28 except that a taxpayer is taxable in a state in which it would be
29 deemed to have substantial nexus with that state under the standards in
30 section 104(1) of this act regardless of whether that state imposes
31 such a tax. "Business activities tax" means a tax measured by the
32 amount of, or economic results of, business activity conducted in a
33 state. The term includes taxes measured in whole or in part on net
34 income or gross income or receipts. "Business activities tax" does not
35 include a sales tax, use tax, or a similar transaction tax, imposed on
36 the sale or acquisition of goods or services, whether or not
37 denominated a gross receipts tax or a tax imposed on the privilege of
38 doing business.

1 (d) This subsection (3) does not apply to financial institutions
2 with respect to apportionable income taxable under RCW 82.04.290.
3 Financial institutions must calculate the receipts factor as provided
4 in section 106 of this act and subsection (4) of this section with
5 respect to apportionable income taxable under RCW 82.04.290. For
6 purposes of this subsection, "financial institution" has the same
7 meaning as in section 106 of this act.

8 (4) A taxpayer may calculate the receipts factor for the current
9 tax year based on the most recent calendar year for which information
10 is available for the full calendar year. If a taxpayer does not
11 calculate the receipts factor for the current tax year based on
12 previous calendar year information as authorized in this subsection,
13 the business must use current year information to calculate the
14 receipts factor for the current tax year. In either case, a taxpayer
15 must correct the reporting for the current tax year when complete
16 information is available to calculate the receipts factor for that
17 year, but not later than October 31st of the following tax year.
18 Interest will apply to any additional tax due on a corrected tax
19 return. Interest must be assessed at the rate provided for delinquent
20 excise taxes under chapter 82.32 RCW, retroactively to the date the
21 original return was due, and will accrue until the additional taxes are
22 paid. Penalties as provided in RCW 82.32.090 will apply to any such
23 additional tax due only if the current tax year reporting is not
24 corrected and the additional tax is not paid by October 31st of the
25 following tax year. Interest as provided in RCW 82.32.060 will apply
26 to any tax paid in excess of that properly due on a return as a result
27 of a taxpayer using previous calendar year data or incomplete current-
28 year data to calculate the receipts factor.

29 (5) Unless the context clearly requires otherwise, the definitions
30 in this subsection apply throughout this section.

31 (a) "Apportionable activities" and "apportionable income" have the
32 same meaning as in RCW 82.04.460.

33 (b) "State" has the same meaning as in section 106 of this act.

34 NEW SECTION. **Sec. 106.** A new section is added to chapter 82.04
35 RCW to read as follows:

36 (1) A financial institution must, for purposes of apportioning
37 gross income of the business taxable under RCW 82.04.290 using the

1 apportionment method provided in section 105(1) of this act, calculate
2 the receipts factor as provided in this section and section 105(4) of
3 this act. Financial institutions that are subject to tax under any
4 other tax classification enumerated in RCW 82.04.460(3)(a) (i) through
5 (v) and (vii) through (ix) must calculate a separate receipts factor,
6 as provided in section 105 of this act, for each of the other tax
7 classifications that the financial institution is taxable under.

8 (2)(a)(i) The numerator of the receipts factor includes gross
9 income from interest, fees, and penalties on loans secured by real
10 property, personal property, or both real and personal property, if the
11 real or personal property is located within this state. If the
12 property securing the loan is located both within this state and one or
13 more other states, the income described in this subsection (2)(a)(i) is
14 included in the numerator of the receipts factor if more than fifty
15 percent of the fair market value of the real or personal property is
16 located within this state. If more than fifty percent of the fair
17 market value of the real or personal property is not located within any
18 one state, then the income described in this subsection (2)(a)(i) is
19 included in the numerator of the receipts factor if the borrower is
20 located in this state.

21 (ii) The denominator of the receipts factor includes gross income
22 from interest, fees, and penalties on loans secured by real property,
23 personal property, or both real and personal property, wherever the
24 property is located.

25 (iii) The determination of whether the real or personal property
26 securing a loan is located within this state must be made as of the
27 time the original agreement was made and any and all subsequent
28 substitutions of collateral must be disregarded.

29 (b) The numerator of the receipts factor includes gross income from
30 interest, fees, and penalties on loans not secured by real or personal
31 property if the borrower is located in this state. The denominator of
32 the receipts factor includes gross income from interest, fees, and
33 penalties on loans that are not secured by real or personal property,
34 regardless of where the borrower is located.

35 (c) The receipts factor includes gross income from net gains, which
36 may not be less than zero, on the sale of loans. Net gains on the sale
37 of loans includes income recorded under the coupon stripping rules of

1 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as
2 existing on July 1, 2010.

3 (i) The amount of net gains, which may not be less than zero, on
4 the sale of loans secured by real property, personal property, or both
5 real and personal property, included in the numerator of the receipts
6 factor is determined by multiplying such net gains by a fraction. The
7 numerator of the fraction is the amount included in the numerator of
8 the receipts factor under (a) of this subsection (2). The denominator
9 of the fraction is the amount included in the denominator of the
10 receipts factor under (a) of this subsection (2).

11 (ii) The amount of net gains, which may not be less than zero, from
12 the sale of loans not secured by real or personal property included in
13 the numerator of the receipts factor is determined by multiplying such
14 net gains by a fraction. The numerator of the fraction is the amount
15 included in the numerator of the receipts factor under (b) of this
16 subsection (2). The denominator of the fraction is the amount included
17 in the denominator of the receipts factor under (b) of this subsection
18 (2).

19 (iii) The denominator of the receipts factor includes gross income
20 from net gains, which may not be less than zero, on all sales of loans.

21 (d) Loan servicing fees are included in the receipts factor as
22 provided in (d)(i) and (ii) of this subsection (2).

23 (i)(A)(I) The numerator of the receipts factor includes gross
24 income from loan servicing fees derived from loans secured by real
25 property, personal property, or both real and personal property,
26 multiplied by a fraction. The numerator of the fraction is the amount
27 included in the numerator of the receipts factor under (a) of this
28 subsection (2). The denominator of the fraction is the amount included
29 in the denominator of the receipts factor under (a) of this subsection
30 (2).

31 (II) The denominator of the receipts factor includes gross income
32 from all loan servicing fees derived from loans secured by real
33 property, personal property, or both real and personal property.

34 (B)(I) The numerator of the receipts factor includes gross income
35 from loan servicing fees derived from loans not secured by real or
36 personal property multiplied by a fraction. The numerator of the
37 fraction is the amount included in the numerator of the receipts factor

1 under (b) of this subsection (2). The denominator of the fraction is
2 the amount included in the denominator of the receipts factor under (b)
3 of this subsection (2).

4 (II) The denominator of the receipts factor includes gross income
5 from all loan servicing fees derived from loans not secured by real or
6 personal property.

7 (ii) If the financial institution receives loan servicing fees for
8 servicing either the secured or the unsecured loans of another, the
9 numerator of the receipts factor includes such fees if the borrower is
10 located in this state. The denominator of the receipts factor includes
11 all such fees.

12 (e)(i) Interest, dividends, net gains (which may not be less than
13 zero), and other income from investment assets and activities and from
14 trading assets and activities, as provided in this subsection (2)(e),
15 are included in the receipts factor. Investment assets and activities
16 and trading assets and activities include but are not limited to:
17 Investment securities; trading account assets; federal funds;
18 securities purchased and sold under agreements to resell or repurchase;
19 options; futures contracts; forward contracts; notional principal
20 contracts such as swaps; equities; and foreign currency transactions.

21 (ii) The numerator of the receipts factor includes gross income
22 from interest, dividends, net gains (which may not be less than zero),
23 and other receipts from investment assets and activities and from
24 trading assets and activities described in (e)(i) of this subsection
25 (2) that are attributable to this state. The denominator of the
26 receipts factor includes all such gross income wherever earned.

27 (A) The amount of interest, dividends, net gains (which may not be
28 less than zero), and other income from investment assets and activities
29 in the investment account to be attributed to this state and included
30 in the numerator of the receipts factor is determined by multiplying
31 all such income from such assets and activities by a fraction. The
32 numerator of the fraction is the average value of such assets that are
33 properly assigned to a regular place of business of the financial
34 institution within this state. The denominator of the fraction is the
35 average value of all such assets.

36 (B)(I) The amount of interest from federal funds sold and purchased
37 and from securities purchased under resale agreements and securities
38 sold under repurchase agreements attributable to this state and

1 included in the numerator of the receipts factor is determined by
2 multiplying the amount described in (e)(ii)(B)(II) of this subsection
3 (2) from such funds and such securities by a fraction. The numerator
4 of the fraction is the average value of federal funds sold and
5 securities purchased under agreements to resell that are properly
6 assigned to a regular place of business of the financial institution
7 within this state. The denominator of the fraction is the average
8 value of all such funds and such securities.

9 (II) The amount used for purposes of making the calculation in
10 (e)(ii)(B)(I) of this subsection (2) is the amount by which interest
11 from federal funds sold and securities purchased under resale
12 agreements exceeds interest expense on federal funds purchased and
13 securities sold under repurchase agreements.

14 (C)(I) The amount of interest, dividends, gains and other income
15 from trading assets and activities, including but not limited to assets
16 and activities in the matched book, in the arbitrage book, and foreign
17 currency transactions, but excluding amounts described in (e)(ii)(A) or
18 (B) of this subsection (2), attributable to this state and included in
19 the numerator of the receipts factor is determined by multiplying the
20 amount described in (e)(ii)(C)(II) of this subsection (2) by a
21 fraction. The numerator of the fraction is the average value of such
22 trading assets that are properly assigned to a regular place of
23 business of the financial institution within this state. The
24 denominator of the fraction is the average value of all such assets.

25 (II) The amount used for purposes of making the calculation in
26 (e)(ii)(C)(I) of this subsection (2) is the amount by which interest,
27 dividends, gains and other receipts from trading assets and activities,
28 including but not limited to assets and activities in the matched book,
29 in the arbitrage book, and foreign currency transactions, exceed
30 amounts paid in lieu of interest, amounts paid in lieu of dividends,
31 and losses from such assets and activities.

32 (D) For purposes of this subsection (2)(e)(ii), average value must
33 be determined using the rules for determining the average value of
34 property set forth in section 104(2) of this act.

35 (iii) In lieu of using the method set forth in (e)(ii) of this
36 subsection (2), the financial institution may elect, or the department
37 may require, in order to fairly represent the business activity of the

1 financial institution in this state, the use of the method set forth in
2 this subsection (2)(e)(iii).

3 (A) The amount of interest, dividends, net gains (which may not be
4 less than zero), and other income from investment assets and activities
5 in the investment account to be attributed to this state and included
6 in the numerator of the receipts factor is determined by multiplying
7 all such income from such assets and activities by a fraction. The
8 numerator of the fraction is the gross income from such assets and
9 activities that are properly assigned to a regular place of business of
10 the financial institution within this state. The denominator of the
11 fraction is the gross income from all such assets and activities.

12 (B) The amount of interest from federal funds sold and purchased
13 and from securities purchased under resale agreements and securities
14 sold under repurchase agreements attributable to this state and
15 included in the numerator of the receipts factor is determined by
16 multiplying the amount described in (e)(ii)(B)(II) of this subsection
17 (2) from such funds and such securities by a fraction. The numerator
18 of the fraction is the gross income from such funds and such securities
19 that are properly assigned to a regular place of business of the
20 financial institution within this state. The denominator of the
21 fraction is the gross income from all such funds and such securities.

22 (C) The amount of interest, dividends, gains and other receipts
23 from trading assets and activities, including but not limited to assets
24 and activities in the matched book, in the arbitrage book, and foreign
25 currency transactions, but excluding amounts described in (e)(ii)(A) or
26 (B) of this subsection (2), attributable to this state and included in
27 the numerator of the receipts factor is determined by multiplying the
28 amount described in (e)(ii)(C)(II) of this subsection (2) by a
29 fraction. The numerator of the fraction is the gross income from such
30 trading assets and activities that are properly assigned to a regular
31 place of business of the financial institution within this state. The
32 denominator of the fraction is the gross income from all such assets
33 and activities.

34 (iv) If the financial institution elects or is required by the
35 department to use the method set forth in (e)(iii) of this subsection
36 (2), it must use this method for subsequent tax returns unless the
37 financial institution receives prior permission from the department to
38 use, or the department requires, a different method.

1 (v) The financial institution has the burden of proving that an
2 investment asset or activity or trading asset or activity was properly
3 assigned to a regular place of business outside of this state by
4 demonstrating that the day-to-day decisions regarding the asset or
5 activity occurred at a regular place of business outside this state.
6 If the day-to-day decisions regarding an investment asset or activity
7 or trading asset or activity occur at more than one regular place of
8 business and one such regular place of business is in this state and
9 one such regular place of business is outside this state, such asset or
10 activity is considered to be located at the regular place of business
11 of the financial institution where the investment or trading policies
12 or guidelines with respect to the asset or activity are established.
13 Such policies and guidelines are presumed, subject to rebuttal by
14 preponderance of the evidence, to be established at the commercial
15 domicile of the financial institution.

16 (f) The numerator of the receipts factor includes gross income from
17 interest, fees, and penalties on credit card receivables, and gross
18 income from fees charged to cardholders, such as annual fees, if the
19 billing address of the cardholder is in this state. The denominator of
20 the receipts factor includes gross income from interest, fees, and
21 penalties on all credit card receivables, and gross income from fees
22 charged to all cardholders, such as annual fees.

23 (g)(i) The numerator of the receipts factor includes gross income
24 from net gains, which may not be less than zero, from the sale of
25 credit card receivables multiplied by a fraction. The numerator of the
26 fraction is the amount included in the numerator of the receipts factor
27 under (f) of this subsection (2). The denominator of the fraction is
28 the amount included in the denominator of the receipts factor under (f)
29 of this subsection (2).

30 (ii) The denominator of the receipts factor includes gross income
31 from net gains, which may not be less than zero, from all sales of
32 credit card receivables.

33 (h)(i) The numerator of the receipts factor includes gross income
34 from all credit card issuer's reimbursement fees multiplied by a
35 fraction. The numerator of the fraction is the amount included in the
36 numerator of the receipts factor under (f) of this subsection (2). The
37 denominator of the fraction is the amount included in the denominator
38 of the receipts factor under (f) of this subsection (2).

1 (ii) The denominator of the receipts factor includes gross income
2 from all credit card issuer's reimbursement fees.

3 (i) The numerator of the receipts factor includes gross income from
4 merchant discounts if the commercial domicile of the merchant is in
5 this state. The denominator of the receipts factor includes gross
6 income from all merchant discounts. For purposes of this subsection
7 (2)(i), gross income must be computed net of any cardholder charge
8 backs but may not be reduced by any interchange transaction fees or by
9 any issuer's reimbursement fees paid to another for charges made by its
10 cardholders.

11 (j) Apportionable income that would be attributable under this
12 subsection (2) to a state in which the financial institution is not
13 taxable must be excluded from the denominator of the receipts factor if
14 at least some of the activity that generated the income is performed in
15 this state, and the gross income is attributable under this subsection
16 (2) to a state in which the taxpayer is not taxable. For purposes of
17 this subsection (2)(j), "not taxable" has the same meaning as in
18 section 105 of this act.

19 (k)(i) The numerator of the receipts factor includes apportionable
20 income taxable under RCW 82.04.290 and not otherwise included in the
21 receipts factor under this subsection (2) if the activity producing the
22 apportionable income is performed in this state. If the activity is
23 performed both inside and outside this state, the numerator of the
24 receipts factor includes apportionable income taxable under RCW
25 82.04.290 and not otherwise included in the receipts factor under this
26 subsection (2) if a greater proportion of the activity producing the
27 apportionable income is performed in this state based on cost of
28 performance.

29 (ii) The denominator of the receipts factor includes apportionable
30 income taxable under RCW 82.04.290 from activities performed
31 everywhere, where the apportionable income taxable under RCW 82.04.290
32 is not otherwise included in the receipts factor under this subsection
33 (2).

34 (3) Except as otherwise provided in subsection (4) of this section,
35 the definitions in the multistate tax commission's recommended formula
36 for the apportionment and allocation of net income of financial
37 institutions, adopted November 17, 1994, as existing on the effective
38 date of this section, apply to this section.

1 (4) Unless the context clearly requires otherwise, the definitions
2 in this subsection apply throughout this section.

3 (a) "Apportionable income" has the same meaning as in RCW
4 82.04.460.

5 (b) "Credit card" means a card or device existing for the purpose
6 of obtaining money, property, labor, or services on credit.

7 (c) "Financial institution" has the same meaning as in WAC 458-20-
8 14601. However, the department may not make any substantive changes to
9 the definition of "financial institution" in WAC 458-20-14601 unless
10 the changes implement a legislative amendment to this definition of
11 financial institution.

12 (d) "State" means a state of the United States, the District of
13 Columbia, the Commonwealth of Puerto Rico, any territory or possession
14 of the United States, or any foreign country or political subdivision
15 of a foreign country.

16 **Sec. 107.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
17 read as follows:

18 (1) Upon every person engaging within this state in the business of
19 receiving income from royalties (~~(or charges in the nature of royalties~~
20 ~~for the granting of intangible rights, such as copyrights, licenses,~~
21 ~~patents, or franchise fees)), the amount of tax with respect to~~
22 ~~((such))~~ the business (~~(shall be))~~ is equal to the gross income from
23 royalties (~~(or charges in the nature of royalties from the business))~~)
24 multiplied by the rate of 0.484 percent.

25 (2) For the purposes of this section, "gross income from royalties"
26 means compensation for the use of intangible property, (~~((such as))~~)
27 including charges in the nature of royalties, regardless of where the
28 intangible property will be used. For purposes of this subsection,
29 "intangible property" includes copyrights, patents, licenses,
30 franchises, trademarks, trade names, and similar items. (~~((It))~~) "Gross
31 income from royalties" does not include compensation for any natural
32 resource, the licensing of prewritten computer software to the end
33 user, or the licensing (~~(or use))~~) of digital goods, digital codes, or
34 digital automated services to the end user as defined in RCW
35 82.04.190(11).

1 **Sec. 108.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to
2 read as follows:

3 (1) Except as otherwise provided in this section, any person
4 ~~((rendering services))~~ earning apportionable income taxable under ((RCW
5 ~~82.04.290 or 82.04.2908))~~ this chapter and ~~((maintaining places of~~
6 ~~business both within and without this state which contribute to the~~
7 ~~rendition of such services shall))~~ also taxable in another state, must,
8 for the purpose of computing tax liability under ~~((RCW 82.04.290 or~~
9 ~~82.04.2908))~~ this chapter, apportion to this state, in accordance with
10 section 105 of this act, that portion of the person's ((gross))
11 apportionable income ((which is)) derived from ((services rendered))
12 business activities performed within this state. ((Where such
13 apportionment cannot be accurately made by separate accounting methods,
14 the taxpayer shall apportion to this state that proportion of the
15 taxpayer's total income which the cost of doing business within the
16 state bears to the total cost of doing business both within and without
17 the state.))

18 (2) ~~((Notwithstanding the provision of subsection (1) of this~~
19 ~~section, persons doing business both within and without the state who~~
20 ~~receive gross income from service charges, as defined in RCW 63.14.010~~
21 ~~(relating to amounts charged for granting the right or privilege to~~
22 ~~make deferred or installment payments) or who receive gross income from~~
23 ~~engaging in business as financial institutions within the scope of~~
24 ~~chapter 82.14A RCW (relating to city taxes on financial institutions)~~
25 ~~shall apportion or allocate gross income taxable under RCW 82.04.290 to~~
26 ~~this state pursuant to rules promulgated by the department consistent~~
27 ~~with uniform rules for apportionment or allocation developed by the~~
28 ~~states.~~

29 ~~(3))~~ The department ~~((shall))~~ may by rule provide a method or
30 methods of apportioning or allocating gross income derived from sales
31 of telecommunications service and competitive telephone service((s))
32 taxed under this chapter, if the gross proceeds of sales subject to tax
33 under this chapter do not fairly represent the extent of the taxpayer's
34 income attributable to this state. ~~((The rules shall be, so far as~~
35 ~~feasible, consistent with the methods of apportionment contained in~~
36 ~~this section and shall require the consideration of those facts,~~
37 ~~circumstances, and apportionment factors as will result in an equitable~~

1 ~~and constitutionally permissible division of the services.)~~ The rule
2 must provide for an equitable and constitutionally permissible division
3 of the tax base.

4 (3) For purposes of this section, the following definitions apply
5 unless the context clearly requires otherwise:

6 (a) "Apportionable income" means gross income of the business
7 generated from engaging in apportionable activities, including income
8 received from apportionable activities performed outside this state if
9 the income would be taxable under this chapter if received from
10 activities in this state, less the exemptions and deductions allowable
11 under this chapter. For purposes of this subsection, "apportionable
12 activities" means only those activities taxed under:

13 (i) RCW 82.04.255;

14 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);

15 (iii) RCW 82.04.280(5);

16 (iv) RCW 82.04.285;

17 (v) RCW 82.04.286;

18 (vi) RCW 82.04.290;

19 (vii) RCW 82.04.2907;

20 (viii) RCW 82.04.2908; and

21 (ix) RCW 82.04.260(14), 82.04.263, and 82.04.280(1), but only to
22 the extent of any activity that would be taxable under any of the
23 provisions enumerated under (a)(i) through (viii) of this subsection
24 (3) if the tax classifications in RCW 82.04.260(14), 82.04.263, and
25 82.04.280(1) did not exist.

26 (b)(i) "Taxable in another state" means that the taxpayer is
27 subject to a business activities tax by another state on its income
28 received from engaging in apportionable activities; or the taxpayer is
29 not subject to a business activities tax by another state on its income
30 received from engaging in apportionable activities, but any other state
31 has jurisdiction to subject the taxpayer to a business activities tax
32 on such income under the substantial nexus standards in section 104(1)
33 of this act.

34 (ii) For purposes of this subsection (3)(b):

35 (A) "Business activities tax" has the same meaning as in section
36 105 of this act; and

37 (B) "State" has the same meaning as in section 106 of this act.

1 (c) An objective of achieving favorable financial accounting
2 benefits arising from tax savings is not deemed to be a substantial
3 nontax purpose for entering into a transaction, plan, or arrangement.

4 (d)(i) Except as provided in (d)(ii) of this subsection (3) the
5 burden is on the department to establish that a transaction, plan, or
6 arrangement lacks economic substance.

7 (ii) If the taxpayer fails to produce records requested by the
8 department that are relevant in determining whether a transaction,
9 plan, or arrangement has economic substance, the burden is on the
10 taxpayer to establish that the transaction, plan, or arrangement has
11 economic substance.

12 (4) The provisions of this section are cumulative and nonexclusive
13 and do not affect any other remedies provided to the department under
14 statutory or common law.

15 (5) The department must by rule, and as resources allow, provide
16 guidance on what it considers to be an abusive tax avoidance
17 transaction. The adoption of a rule as required under this subsection
18 is not a condition precedent for the department to use the authority
19 provided in this section to disregard abusive tax avoidance
20 transactions. The rule adopted under this section must include
21 examples of abusive tax avoidance transactions.

22 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.32
23 RCW to read as follows:

24 (1)(a) The department may not use section 201 of this act to
25 disregard any transaction, plan, or arrangement initiated before July
26 1, 2010, if, in respect to such transaction, plan, or arrangement, the
27 taxpayer had reported its tax liability in conformance with either
28 specific written instructions provided by the department to the
29 taxpayer, a determination published under the authority of RCW
30 82.32.410, or other document published by the department.

31 (b) This section does not apply if the transaction, plan, or
32 arrangement engaged in by the taxpayer differs materially from the
33 transaction, plan, or arrangement that was addressed in the specific
34 written instructions, published determination, or other published
35 document.

36 (2) For purposes of this section, "specific written instructions"
37 means tax reporting instructions provided to a taxpayer and which

1 specifically identifies the taxpayer to whom the instructions apply.
2 Specific written instructions may be provided as part of an audit, tax
3 assessment, determination, closing agreement, or in response to a
4 binding ruling request.

5 **Sec. 203.** RCW 82.32.090 and 2006 c 256 s 6 are each amended to
6 read as follows:

7 (1) If payment of any tax due on a return to be filed by a taxpayer
8 is not received by the department of revenue by the due date, there
9 (~~shall be~~) is assessed a penalty of five percent of the amount of the
10 tax; and if the tax is not received on or before the last day of the
11 month following the due date, there (~~shall be~~) is assessed a total
12 penalty of fifteen percent of the amount of the tax under this
13 subsection; and if the tax is not received on or before the last day of
14 the second month following the due date, there (~~shall be~~) is assessed
15 a total penalty of twenty-five percent of the amount of the tax under
16 this subsection. No penalty so added shall be less than five dollars.

17 (2) If the department of revenue determines that any tax has been
18 substantially underpaid, there (~~shall be~~) is assessed a penalty of
19 five percent of the amount of the tax determined by the department to
20 be due. If payment of any tax determined by the department to be due
21 is not received by the department by the due date specified in the
22 notice, or any extension thereof, there (~~shall be~~) is assessed a
23 total penalty of fifteen percent of the amount of the tax under this
24 subsection; and if payment of any tax determined by the department to
25 be due is not received on or before the thirtieth day following the due
26 date specified in the notice of tax due, or any extension thereof,
27 there (~~shall be~~) is assessed a total penalty of twenty-five percent
28 of the amount of the tax under this subsection. No penalty so added
29 (~~shall~~) may be less than five dollars. As used in this section,
30 "substantially underpaid" means that the taxpayer has paid less than
31 eighty percent of the amount of tax determined by the department to be
32 due for all of the types of taxes included in, and for the entire
33 period of time covered by, the department's examination, and the amount
34 of underpayment is at least one thousand dollars.

35 (3) If a warrant (~~be~~) is issued by the department (~~of revenue~~)
36 for the collection of taxes, increases, and penalties, there (~~shall~~

1 be)) is added thereto a penalty of ten percent of the amount of the
2 tax, but not less than ten dollars.

3 (4) If the department finds that a person has engaged in any
4 business or performed any act upon which a tax is imposed under this
5 title and that person has not obtained from the department a
6 registration certificate as required by RCW 82.32.030, the department
7 (~~shall~~) must impose a penalty of five percent of the amount of tax
8 due from that person for the period that the person was not registered
9 as required by RCW 82.32.030. The department (~~shall~~) may not impose
10 the penalty under this subsection (4) if a person who has engaged in
11 business taxable under this title without first having registered as
12 required by RCW 82.32.030, prior to any notification by the department
13 of the need to register, obtains a registration certificate from the
14 department.

15 (5) If the department finds that all or any part of a deficiency
16 resulted from the disregard of specific written instructions as to
17 reporting or tax liabilities, the department (~~shall~~) must add a
18 penalty of ten percent of the amount of the additional tax found due
19 because of the failure to follow the instructions. A taxpayer
20 disregards specific written instructions when the department (~~of~~
21 ~~revenue~~) has informed the taxpayer in writing of the taxpayer's tax
22 obligations and the taxpayer fails to act in accordance with those
23 instructions unless the department has not issued final instructions
24 because the matter is under appeal pursuant to this chapter or
25 departmental regulations. The department (~~shall~~) may not assess the
26 penalty under this section upon any taxpayer who has made a good faith
27 effort to comply with the specific written instructions provided by the
28 department to that taxpayer. Specific written instructions may be
29 given as a part of a tax assessment, audit, determination, or closing
30 agreement, provided that such specific written instructions (~~shall~~)
31 apply only to the taxpayer addressed or referenced on such documents.
32 Any specific written instructions by the department (~~of—revenue~~
33 ~~shall~~) must be clearly identified as such and (~~shall~~) must inform
34 the taxpayer that failure to follow the instructions may subject the
35 taxpayer to the penalties imposed by this subsection.

36 (6) If the department finds that all or any part of a deficiency
37 resulted from engaging in an abusive tax avoidance transaction, as
38 defined in section 201 of this act, the department must assess a

1 penalty of thirty-five percent of the additional tax found to be due as
2 a result of engaging in the abusive tax avoidance transaction. The
3 penalty provided in this subsection may be assessed together with any
4 other applicable penalties provided in this section on the same tax
5 found to be due, except for the evasion penalty provided in subsection
6 (7) of this section. The department may not assess the penalty under
7 this subsection if, before the department discovers the taxpayer's use
8 of an abusive tax avoidance transaction, the taxpayer discloses its
9 participation in the abusive tax avoidance transaction to the
10 department.

11 (7) If the department finds that all or any part of the deficiency
12 resulted from an intent to evade the tax payable (~~hereunder~~), a
13 further penalty of fifty percent of the additional tax found to be due
14 (~~shall~~) must be added.

15 ~~((+7))~~ (8) The penalties imposed under subsections (1) through (4)
16 of this section can each be imposed on the same tax found to be due.
17 This subsection does not prohibit or restrict the application of other
18 penalties authorized by law.

19 ~~((+8))~~ (9) The department (~~of revenue~~) may not impose both the
20 evasion penalty and the penalty for disregarding specific written
21 instructions or the penalty provided in subsection (6) of this section
22 on the same tax found to be due.

23 ~~((+9))~~ (10) For the purposes of this section, "return" means any
24 document a person is required by the state of Washington to file to
25 satisfy or establish a tax or fee obligation that is administered or
26 collected by the department (~~of revenue~~), and that has a statutorily
27 defined due date.

28 NEW SECTION. Sec. 204. (1) The legislature finds that this
29 state's tax policy with respect to the taxation of transactions between
30 affiliated entities and the income derived from such transactions
31 (intercompany transactions) has motivated some taxpayers to engage in
32 transactions designed solely or primarily to minimize the tax effects
33 of intercompany transactions. The legislature further finds that some
34 intercompany transactions result from taxpayers that are required to
35 establish affiliated entities to comply with regulatory mandates and
36 that transactions between such affiliates effectively increases the tax
37 burden in this state on the affiliated group of entities.

1 (2) Therefore, as existing resources allow, the department of
2 revenue is directed to conduct a review of the state's tax policy with
3 respect to the taxation of intercompany transactions. The review must
4 include the impacts of such transactions under the state's business and
5 occupation tax and state and local sales and use taxes. The department
6 may include other taxes in the review as it deems appropriate.

7 (3) In conducting the review, the department must examine how this
8 state's tax policy compares to the tax policy of other states with
9 respect to the taxation of intercompany transactions. The department's
10 review must include an analysis of potential alternatives to the
11 current policy of taxing intercompany transactions, including their
12 estimated revenue impacts if practicable.

13 (4) In conducting this review, the department may seek input from
14 members of the business community and others as it deems appropriate.

15 (5) The department must report its findings to the fiscal
16 committees of the house of representatives and senate by December 1,
17 2010. However, if the department has not completed its review by
18 December 1, 2010, the department must provide the fiscal committees of
19 the legislature with a brief status report by December 1, 2010, and the
20 final report by December 1, 2011.

21 **Sec. 205.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
22 read as follows:

23 (1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected
24 from every person in this state a tax or excise for the privilege of
25 using within this state as a consumer any:

26 (a) Article of tangible personal property ~~((purchased at retail,~~
27 ~~or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted~~
28 ~~or produced or manufactured by the person so using the same, or~~
29 ~~otherwise furnished to a person engaged in any business taxable under~~
30 ~~RCW 82.04.280 (2) or (7))~~ the user in any manner, including tangible
31 personal property acquired at a casual or isolated sale, and including
32 by-products used by the manufacturer thereof, except as otherwise
33 provided in this chapter, irrespective of whether the article or
34 similar articles are manufactured or are available for purchase within
35 this state;

36 (b) Prewritten computer software, regardless of the method of

1 delivery, but excluding prewritten computer software that is either
2 provided free of charge or is provided for temporary use in viewing
3 information, or both;

4 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or
5 (g), (3)(a), or (6)(b), excluding services defined as a retail sale in
6 RCW 82.04.050(6)(b) that are provided free of charge;

7 (d) Extended warranty; or

8 (e)(i) Digital good, digital code, or digital automated service,
9 including the use of any services provided by a seller exclusively in
10 connection with digital goods, digital codes, or digital automated
11 services, whether or not a separate charge is made for such services.

12 (ii) With respect to the use of digital goods, digital automated
13 services, and digital codes acquired by purchase, the tax imposed in
14 this subsection (1)(e) applies in respect to:

15 (A) Sales in which the seller has granted the purchaser the right
16 of permanent use;

17 (B) Sales in which the seller has granted the purchaser a right of
18 use that is less than permanent;

19 (C) Sales in which the purchaser is not obligated to make continued
20 payment as a condition of the sale; and

21 (D) Sales in which the purchaser is obligated to make continued
22 payment as a condition of the sale.

23 (iii) With respect to digital goods, digital automated services,
24 and digital codes acquired other than by purchase, the tax imposed in
25 this subsection (1)(e) applies regardless of whether or not the
26 consumer has a right of permanent use or is obligated to make continued
27 payment as a condition of use.

28 (2) The provisions of this chapter do not apply in respect to the
29 use of any article of tangible personal property, extended warranty,
30 digital good, digital code, digital automated service, or service
31 taxable under RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), if the
32 sale to, or the use by, the present user or the present user's bailor
33 or donor has already been subjected to the tax under chapter 82.08 RCW
34 or this chapter and the tax has been paid by the present user or by the
35 present user's bailor or donor.

36 (3)(a) Except as provided in this section, payment of the tax
37 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
38 of tangible personal property, extended warranty, digital good, digital

1 code, digital automated service, or other service does not have the
2 effect of exempting any other purchaser or user of the same property,
3 extended warranty, digital good, digital code, digital automated
4 service, or other service from the taxes imposed by such chapters.

5 (b) The tax imposed by this chapter does not apply:

6 (i) If the sale to, or the use by, the present user or his or her
7 bailor or donor has already been subjected to the tax under chapter
8 82.08 RCW or this chapter and the tax has been paid by the present user
9 or by his or her bailor or donor;

10 (ii) In respect to the use of any article of tangible personal
11 property acquired by bailment and the tax has once been paid based on
12 reasonable rental as determined by RCW 82.12.060 measured by the value
13 of the article at time of first use multiplied by the tax rate imposed
14 by chapter 82.08 RCW or this chapter as of the time of first use;

15 (iii) In respect to the use of any article of tangible personal
16 property acquired by bailment, if the property was acquired by a
17 previous bailee from the same bailor for use in the same general
18 activity and the original bailment was prior to June 9, 1961; or

19 (iv) To the use of digital goods or digital automated services,
20 which were obtained through the use of a digital code, if the sale of
21 the digital code to, or the use of the digital code by, the present
22 user or the present user's bailor or donor has already been subjected
23 to the tax under chapter 82.08 RCW or this chapter and the tax has been
24 paid by the present user or by the present user's bailor or donor.

25 (4)(a) Except as provided in (b) of this subsection (4), the tax is
26 levied and must be collected in an amount equal to the value of the
27 article used, value of the digital good or digital code used, value of
28 the extended warranty used, or value of the service used by the
29 taxpayer, multiplied by the applicable rates in effect for the retail
30 sales tax under RCW 82.08.020.

31 (b) In the case of a seller required to collect use tax from the
32 purchaser, the tax must be collected in an amount equal to the purchase
33 price multiplied by the applicable rate in effect for the retail sales
34 tax under RCW 82.08.020.

35 (5) For purposes of the tax imposed in this section, "person"
36 includes anyone within the definition of "buyer," "purchaser," and
37 "consumer" in RCW 82.08.010.

1 **Sec. 206.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
2 each reenacted and amended to read as follows:

3 (1) As used in this chapter, the term "sale" (~~((shall have))~~) has its
4 ordinary meaning and (~~((shall))~~) includes any conveyance, grant,
5 assignment, quitclaim, or transfer of the ownership of or title to real
6 property, including standing timber, or any estate or interest therein
7 for a valuable consideration, and any contract for such conveyance,
8 grant, assignment, quitclaim, or transfer, and any lease with an option
9 to purchase real property, including standing timber, or any estate or
10 interest therein or other contract under which possession of the
11 property is given to the purchaser, or any other person at the
12 purchaser's direction, and title to the property is retained by the
13 vendor as security for the payment of the purchase price. The term
14 also includes the grant, assignment, quitclaim, sale, or transfer of
15 improvements constructed upon leased land.

16 (2)(a) The term "sale" also includes the transfer or acquisition
17 within any twelve-month period of a controlling interest in any entity
18 with an interest in real property located in this state for a valuable
19 consideration.

20 **(b) For the sole purpose of determining whether, pursuant to the**
21 **exercise of an option, a controlling interest was transferred or**
22 **acquired within a twelve-month period, the date that the option**
23 **agreement was executed is the date on which the transfer or acquisition**
24 **of the controlling interest is deemed to occur. For all other purposes**
25 **under this chapter, the date upon which the option is exercised is the**
26 **date of the transfer or acquisition of the controlling interest.**

27 (c) For purposes of this subsection, all acquisitions of persons
28 acting in concert (~~((shall))~~) must be aggregated for purposes of
29 determining whether a transfer or acquisition of a controlling interest
30 has taken place. The department (~~((of revenue shall))~~) must adopt
31 standards by rule to determine when persons are acting in concert. In
32 adopting a rule for this purpose, the department (~~((shall))~~) must
33 consider the following:

34 (~~((a))~~) (i) Persons (~~((shall))~~) must be treated as acting in concert
35 when they have a relationship with each other such that one person
36 influences or controls the actions of another through common ownership;
37 and

1 (~~(b)~~) (ii) When persons are not commonly owned or controlled,
2 they (~~shall~~) must be treated as acting in concert only when the unity
3 with which the purchasers have negotiated and will consummate the
4 transfer of ownership interests supports a finding that they are acting
5 as a single entity. If the acquisitions are completely independent,
6 with each purchaser buying without regard to the identity of the other
7 purchasers, then the acquisitions (~~shall be~~) are considered separate
8 acquisitions.

9 (3) The term "sale" (~~shall~~) does not include:

10 (a) A transfer by gift, devise, or inheritance.

11 (b) A transfer of any leasehold interest other than of the type
12 mentioned above.

13 (c) A cancellation or forfeiture of a vendee's interest in a
14 contract for the sale of real property, whether or not such contract
15 contains a forfeiture clause, or deed in lieu of foreclosure of a
16 mortgage.

17 (d) The partition of property by tenants in common by agreement or
18 as the result of a court decree.

19 (e) The assignment of property or interest in property from one
20 spouse or one domestic partner to the other spouse or other domestic
21 partner in accordance with the terms of a decree of dissolution of
22 marriage or state registered domestic partnership or in fulfillment of
23 a property settlement agreement.

24 (f) The assignment or other transfer of a vendor's interest in a
25 contract for the sale of real property, even though accompanied by a
26 conveyance of the vendor's interest in the real property involved.

27 (g) Transfers by appropriation or decree in condemnation
28 proceedings brought by the United States, the state or any political
29 subdivision thereof, or a municipal corporation.

30 (h) A mortgage or other transfer of an interest in real property
31 merely to secure a debt, or the assignment thereof.

32 (i) Any transfer or conveyance made pursuant to a deed of trust or
33 an order of sale by the court in any mortgage, deed of trust, or lien
34 foreclosure proceeding or upon execution of a judgment, or deed in lieu
35 of foreclosure to satisfy a mortgage or deed of trust.

36 (j) A conveyance to the federal housing administration or veterans
37 administration by an authorized mortgagee made pursuant to a contract

1 of insurance or guaranty with the federal housing administration or
2 veterans administration.

3 (k) A transfer in compliance with the terms of any lease or
4 contract upon which the tax as imposed by this chapter has been paid or
5 where the lease or contract was entered into prior to the date this tax
6 was first imposed.

7 (l) The sale of any grave or lot in an established cemetery.

8 (m) A sale by the United States, this state or any political
9 subdivision thereof, or a municipal corporation of this state.

10 (n) A sale to a regional transit authority or public corporation
11 under RCW 81.112.320 under a sale/leaseback agreement under RCW
12 81.112.300.

13 (o) A transfer of real property, however effected, if it consists
14 of a mere change in identity or form of ownership of an entity where
15 there is no change in the beneficial ownership. These include
16 transfers to a corporation or partnership which is wholly owned by the
17 transferor and/or the transferor's spouse or domestic partner or
18 children of the transferor or the transferor's spouse or domestic
19 partner(~~(+PROVIDED, That)~~). However, if thereafter such transferee
20 corporation or partnership voluntarily transfers such real property, or
21 such transferor, spouse or domestic partner, or children of the
22 transferor or the transferor's spouse or domestic partner voluntarily
23 transfer stock in the transferee corporation or interest in the
24 transferee partnership capital, as the case may be, to other than
25 (~~(+1)~~) (i) the transferor and/or the transferor's spouse or domestic
26 partner or children of the transferor or the transferor's spouse or
27 domestic partner, (~~(+2)~~) (ii) a trust having the transferor and/or the
28 transferor's spouse or domestic partner or children of the transferor
29 or the transferor's spouse or domestic partner as the only
30 beneficiaries at the time of the transfer to the trust, or (~~(+3)~~)
31 (iii) a corporation or partnership wholly owned by the original
32 transferor and/or the transferor's spouse or domestic partner or
33 children of the transferor or the transferor's spouse or domestic
34 partner, within three years of the original transfer to which this
35 exemption applies, and the tax on the subsequent transfer has not been
36 paid within sixty days of becoming due, excise taxes (~~shall~~) become
37 due and payable on the original transfer as otherwise provided by law.

1 (p)(i) A transfer that for federal income tax purposes does not
2 involve the recognition of gain or loss for entity formation,
3 liquidation or dissolution, and reorganization, including but not
4 limited to nonrecognition of gain or loss because of application of
5 (~~section~~) 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the
6 internal revenue code of 1986, as amended.

7 (ii) However, the transfer described in (p)(i) of this subsection
8 cannot be preceded or followed within a twelve-month period by another
9 transfer or series of transfers, that, when combined with the otherwise
10 exempt transfer or transfers described in (p)(i) of this subsection,
11 results in the transfer of a controlling interest in the entity for
12 valuable consideration, and in which one or more persons previously
13 holding a controlling interest in the entity receive cash or property
14 in exchange for any interest the person or persons acting in concert
15 hold in the entity. This subsection (3)(p)(ii) does not apply to that
16 part of the transfer involving property received that is the real
17 property interest that the person or persons originally contributed to
18 the entity or when one or more persons who did not contribute real
19 property or belong to the entity at a time when real property was
20 purchased receive cash or personal property in exchange for that person
21 or persons' interest in the entity. The real estate excise tax under
22 this subsection (3)(p)(ii) is imposed upon the person or persons who
23 previously held a controlling interest in the entity.

24 (q) A qualified sale of a manufactured/mobile home community, as
25 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
26 but before December 31, 2018.

27 **Sec. 207.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended
28 to read as follows:

29 (1) As used in this chapter, the term "controlling interest" has
30 the following meaning:

31 (~~(1)~~) (a) In the case of a corporation, either fifty percent or
32 more of the total combined voting power of all classes of stock of the
33 corporation entitled to vote, or fifty percent of the capital, profits,
34 or beneficial interest in the voting stock of the corporation; and

35 (~~(2)~~) (b) In the case of a partnership, association, trust, or
36 other entity, fifty percent or more of the capital, profits, or

1 beneficial interest in such partnership, association, trust, or other
2 entity.

3 (2) The department may, at the department's option, enforce the
4 obligation of the seller under this chapter as provided in this
5 subsection (2):

6 (a) In the transfer or acquisition of a controlling interest as
7 defined in subsection (1)(a) of this section, either against the
8 corporation in which a controlling interest is transferred or acquired,
9 against the person or persons who acquired the controlling interest in
10 the corporation or, when the corporation is not a publicly traded
11 company, against the person or persons who transferred the controlling
12 interest in the corporation; and

13 (b) In the transfer or acquisition of a controlling interest as
14 defined in subsection (1)(b) of this section, either against the entity
15 in which a controlling interest is transferred or acquired or against
16 the person or persons who transferred or acquired the controlling
17 interest in the entity.

18 **Sec. 208.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each
19 amended to read as follows:

20 The tax ((~~herein~~)) provided for in this chapter and any interest or
21 penalties thereon ((~~shall be~~)) is a specific lien upon each ((~~piece~~))
22 parcel of real property located in this state that is either sold or
23 that is owned by an entity in which a controlling interest has been
24 transferred or acquired. The lien attaches from the time of sale until
25 the tax ((~~shall have been~~)) is paid, which lien may be enforced in the
26 manner prescribed for the foreclosure of mortgages.

27 **Sec. 209.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
28 read as follows:

29 (1) The tax levied under this chapter ((~~shall be~~)) is the
30 obligation of the seller and the department ((~~of revenue~~)) may, at the
31 department's option, enforce the obligation through an action of debt
32 against the seller or the department may proceed in the manner
33 prescribed for the foreclosure of mortgages ((~~and resort to~~)). The
34 department's use of one course of enforcement ((~~shall~~)) is not ((~~be~~))
35 an election not to pursue the other.

1 ~~(a))~~ an instrument evidencing the sale is recorded in the official
2 real property records of the county in which the property conveyed is
3 located~~((or~~

4 ~~(b) Either the transferor or transferee notifies the department of~~
5 ~~revenue in writing of the occurrence of the sale within thirty days~~
6 ~~following the date of the sale)).~~

7 (4) If upon examination of any affidavits or from other information
8 obtained by the department or its agents it appears that all or a
9 portion of the tax is unpaid, the department ~~((shall))~~ must assess
10 against the taxpayer the additional amount found to be due plus
11 interest and penalties as provided in subsections (1) and (2) of this
12 section. The department ~~((shall))~~ must notify the taxpayer by mail, or
13 electronically as provided in RCW 82.32.135, of the additional amount
14 and the same ~~((shall))~~ becomes due and ~~((shall))~~ must be paid within
15 thirty days from the date of the notice, or within such further time as
16 the department may provide.

17 (5) No assessment or refund may be made by the department more than
18 four years after the date of sale except upon a showing of:

19 (a) Fraud or misrepresentation of a material fact by the taxpayer;

20 (b) A failure by the taxpayer to record documentation of a sale or
21 otherwise report the sale to the county treasurer; or

22 (c) A failure of the transferor or transferee to report the sale
23 under RCW 82.45.090(2).

24 (6) Penalties collected on taxes due under this chapter under
25 subsection (2) of this section and RCW 82.32.090 (2) through (7)
26 ~~((shall))~~ must be deposited in the housing trust fund as described in
27 chapter 43.185 RCW.

28 **Sec. 211.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to
29 read as follows:

30 (1) An organization that fails to report a transfer of the
31 controlling interest in the organization under RCW 43.07.390 to the
32 secretary of state and is later determined to be subject to real estate
33 excise taxes due to the transfer, ~~((shall be))~~ is subject to the
34 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
35 82.32.090~~((+6))~~ (7).

36 (2) Subsection (1) of this section also applies to the failure to

1 report to the secretary of state the granting of an option to acquire
2 an interest in the organization if the exercise of the option would
3 result in a sale as defined in RCW 82.45.010(2).

4 **Sec. 212.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to
5 read as follows:

6 (1)(a) The secretary of state (~~shall~~) must adopt rules requiring
7 any entity that is required to file an annual report with the secretary
8 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
9 disclose: (i) Any transfer (~~in~~) of the controlling interest (~~of~~)
10 in the entity (~~and any interest in real property~~); and (ii) the
11 granting of any option to acquire an interest in the entity if the
12 exercise of the option would result in a sale as defined in RCW
13 82.45.010(2).

14 (b) The disclosure requirement in this subsection only applies to
15 entities owning an interest in real property located in this state.

16 (2) This information (~~shall~~) must be made available to the
17 department of revenue upon request for the purposes of tracking the
18 transfer of the controlling interest in entities owning real property
19 and to determine when the real estate excise tax is applicable in such
20 cases.

21 (3) For the purposes of this section, "controlling interest" has
22 the same meaning as provided in RCW 82.45.033.

23 **PART III**

24 **Placing a Cap On the First Mortgage Deduction**

25 **Sec. 301.** RCW 82.04.4292 and 1980 c 37 s 12 are each amended to
26 read as follows:

27 (1) In computing tax there may be deducted from the measure of tax
28 by those engaged in banking, loan, security or other financial
29 businesses, amounts derived from interest received on investments or
30 loans primarily secured by first mortgages or trust deeds on
31 nontransient residential properties.

32 (2) The total amount a person may deduct under this section for any
33 calendar year may not exceed thirty-five million dollars.

1 **PART IV**

2 **Repealing the Nonresident Sales Tax Exemption**

3 NEW SECTION. **Sec. 401.** RCW 82.08.0273 (Exemptions--Sales to
4 nonresidents of tangible personal property, digital goods, and digital
5 codes for use outside the state--Proof of nonresident status--
6 Penalties) and 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993
7 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are
8 each repealed.

9 **PART V**

10 **Direct Seller Business and Occupation Tax Exemption**

11 NEW SECTION. **Sec. 501.** (1) A business and occupation tax
12 exemption is provided in RCW 82.04.423 for certain out-of-state sellers
13 that sell consumer products exclusively to or through a direct seller's
14 representative. The intent of the legislature in enacting this
15 exemption was to provide a narrow exemption for out-of-state businesses
16 engaged in direct sales of consumer products, typically accomplished
17 through in-home parties or door-to-door selling.

18 (2) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2
19 (September 10, 2009), the Washington supreme court held that the
20 exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold
21 nonconsumer products through its representative in addition to consumer
22 products; and (b) whose consumer products were ultimately sold at
23 retail in permanent retail establishments.

24 (3) The legislature finds that most out-of-state businesses selling
25 consumer products in this state will either be eligible for the
26 exemption under RCW 82.04.423 or could easily restructure their
27 business operations to qualify for the exemption. As a result, the
28 legislature expects that the broadened interpretation of the direct
29 sellers' exemption will lead to large and devastating revenue losses.
30 This comes at a time when the state's existing budget is facing a two
31 billion six hundred million dollar shortfall, which could grow, while
32 at the same time the demand for state and state-funded services is also
33 growing. Moreover, the legislature further finds that RCW 82.04.423
34 provides preferential tax treatment for out-of-state businesses over
35 their in-state competitors and now creates a strong incentive for in-
36 state businesses to move their operations outside Washington.

1 (4) Therefore, the legislature finds that it is necessary to
2 reaffirm the legislature's intent in establishing the direct sellers'
3 exemption and prevent the loss of revenues resulting from the expanded
4 interpretation of the exemption by amending RCW 82.04.423 retroactively
5 to conform the exemption to the original intent of the legislature and
6 by prospectively ending the direct sellers' exemption effective July 1,
7 2010. The legislature recognizes that the department of revenue has
8 asked the Washington supreme court to reconsider its decision in *Dot*
9 *Foods*. As a result, if the *Dot Foods* decision is not final on the
10 effective date of section 502 of this act, it is the legislature's
11 intent that the amendments in section 502 of this act be considered
12 clarifying in nature.

13 **Sec. 502.** RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each
14 amended to read as follows:

15 (1) Prior to April 1, 2010, this chapter ((shall)) does not apply
16 to any person in respect to gross income derived from the business of
17 making sales at wholesale or retail if such person:

18 (a) Does not own or lease real property within this state; and

19 (b) Does not regularly maintain a stock of tangible personal
20 property in this state for sale in the ordinary course of business; and

21 (c) Is not a corporation incorporated under the laws of this state;
22 and

23 (d) Makes sales in this state exclusively to or through a direct
24 seller's representative.

25 (2) For purposes of this section, the term "direct seller's
26 representative" means a person who buys only consumer products on a
27 buy-sell basis or a deposit-commission basis for resale, by the buyer
28 or any other person, in the home or otherwise than in a permanent
29 retail establishment, or who sells at retail, or solicits the sale at
30 retail of, only consumer products in the home or otherwise than in a
31 permanent retail establishment; and

32 (a) Substantially all of the remuneration paid to such person,
33 whether or not paid in cash, for the performance of services described
34 in this subsection is directly related to sales or other output,
35 including the performance of services, rather than the number of hours
36 worked; and

1 (b) The services performed by the person are performed pursuant to
2 a written contract between such person and the person for whom the
3 services are performed and such contract provides that the person will
4 not be treated as an employee with respect to such purposes for federal
5 tax purposes.

6 (3) Nothing in this section (~~shall~~) may be construed to imply
7 that a person exempt from tax under this section was engaged in a
8 business activity taxable under this chapter prior to (~~the enactment~~
9 ~~of this section~~) August 23, 1983.

10 **PART VI**

11 **Business and Occupation Tax Preferences for Manufacturers of Products**
12 **Derived from Certain Agricultural Products**

13 NEW SECTION. **Sec. 601.** (1)(a) In 1967, the legislature amended
14 RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a
15 preferential business and occupation tax rate for slaughtering,
16 breaking, and/or processing perishable meat products and/or selling the
17 same at wholesale. The legislature finds that RCW 82.04.260(4) was
18 interpreted by the state supreme court on January 13, 2005, in *AgriLink*
19 *Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The
20 supreme court held that the preferential business and occupation tax
21 rate on the slaughtering, breaking, and/or processing of perishable
22 meat products applied to the processing of perishable meat products
23 into nonperishable finished products, such as canned food.

24 (b) The legislature intends to narrow the exemption provided for
25 slaughtering, breaking, and/or processing perishable meat products
26 and/or selling such products at wholesale by requiring that the end
27 product be a perishable meat product; a nonperishable meat product that
28 is comprised primarily of animal carcass by weight or volume, other
29 than a canned meat product; or a meat by-product.

30 (2)(a) A business and occupation tax exemption is provided for (i)
31 manufacturing by canning, preserving, freezing, processing, or
32 dehydrating fresh fruits or vegetables, and (ii) selling such products
33 at wholesale by the manufacturer to purchasers who transport the goods
34 out of state in the ordinary course of business. This exemption
35 expires July 1, 2012, and is replaced by a preferential business and
36 occupation tax rate.

1 (b) The legislature finds that the rationale of the *Agrilink*
2 decision, if applied to these tax preferences, could result in
3 preferential tax treatment for any processed food product that
4 contained any fresh fruit or vegetable as an ingredient, however small
5 the amount.

6 (c) The legislature intends to narrow the tax preference provided
7 to fruit and vegetable manufacturers by requiring that the end product
8 be comprised either (i) exclusively of fruits and/or vegetables, or
9 (ii) of any combination of fruits, vegetables, and certain other
10 substances that, cumulatively, may not exceed the amount of fruits and
11 vegetables contained in the product measured by weight or volume.

12 NEW SECTION. **Sec. 602.** A new section is added to chapter 82.04
13 RCW to read as follows:

14 (1) Upon every person engaging within this state in the business of
15 manufacturing:

16 (a) Perishable meat products, by slaughtering, breaking, or
17 processing, if the finished product is a perishable meat product; as to
18 such persons the tax imposed is equal to the value of the perishable
19 meat products manufactured, or, in the case of a processor for hire,
20 the gross income of the business, multiplied by the rate of 0.138
21 percent;

22 (b) Meat products, by dehydration, curing, smoking, or any
23 combination of these activities, if the finished meat products are not
24 canned; as to such persons the tax imposed is equal to the value of the
25 meat products manufactured, or, in the case of a processor for hire,
26 the gross income of the business, multiplied by the rate of 0.138
27 percent;

28 (c) Hides, tallow, meat meal, and other similar meat by-products,
29 if such products are derived in part from animals and manufactured in
30 a rendering plant licensed under chapter 16.68 RCW; as to such persons
31 the tax imposed is equal to the value of the products manufactured, or,
32 in the case of a processor for hire, the gross income of the business,
33 multiplied by the rate of 0.138 percent.

34 (2) Upon every person engaging within this state in the business of
35 selling at wholesale:

36 (a) Perishable meat products; as to such persons the tax imposed is

1 equal to the gross proceeds derived from such sales multiplied by the
2 rate of 0.138 percent;

3 (b) Meat products that have been manufactured by the seller by
4 dehydration, curing, smoking, or any combination of such activities, if
5 the finished meat products are not canned; as to such persons the tax
6 imposed is equal to the gross proceeds derived from such sales
7 multiplied by the rate of 0.138 percent;

8 (c) Hides, tallow, meat meal, and other similar meat by-products,
9 if such products are derived in part from animals and manufactured by
10 the seller in a rendering plant; as to such persons the tax imposed is
11 equal to the gross proceeds derived from such sales multiplied by the
12 rate of 0.138 percent.

13 (3) The definitions in this subsection apply throughout this
14 section unless the context clearly requires otherwise.

15 (a) "Animal" means all members of the animal kingdom except humans,
16 fish, and insects.

17 (b) "Carcass" means all or any parts, including viscera, of a
18 slaughtered animal.

19 (c) "Fish" means any water-breathing animal, including shellfish.

20 (d) "Hide" means any unprocessed animal pelt or skin.

21 (e)(i) "Meat products" means:

22 (A) Products comprised exclusively of animal carcass; and

23 (B) Except as provided in (e)(ii) of this subsection (3), products,
24 such as jerky, sausage, and other cured meat products, that are
25 comprised primarily of animal carcass by weight or volume and may also
26 contain water; nitrates; nitrites; acids; binders and extenders;
27 natural or synthetic casings; colorings; flavorings such as soy sauce,
28 liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and
29 vinegar; and similar substances.

30 (ii) "Meat products" does not include products containing any
31 cereal grains or cereal-grain products, dairy products, legumes and
32 legume products, fruit or vegetable products as defined in RCW
33 82.04.260, and similar ingredients, unless the ingredient is used as a
34 flavoring. For purposes of this subsection, "flavoring" means a
35 substance that contains the flavoring constituents derived from a
36 spice, fruit or fruit juice, vegetable or vegetable juice, edible
37 yeast, herb, bark, bud, root, leaf, or any other edible substance of
38 plant origin, whose primary function in food is flavoring or seasoning

1 rather than nutritional, and which may legally appear as "natural
2 flavor," "flavor," or "flavorings" in the ingredient statement on the
3 label of the meat product.

4 (iii) "Meat products" includes only products that are intended for
5 human consumption as food or animal consumption as feed.

6 (f) "Perishable" means having a high risk of spoilage within thirty
7 days of manufacture without any refrigeration or freezing.

8 (g) "Rendering plant" means any place of business or location where
9 dead animals or any part or portion thereof, or packing house refuse,
10 are processed for the purpose of obtaining the hide, skin, grease
11 residue, or any other by-product whatsoever.

12 **Sec. 603.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to
13 read as follows:

14 (1) This chapter (~~shall~~) does not apply to the value of products
15 or the gross proceeds of sales derived from:

16 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
17 preserving, freezing, processing, or dehydrating fresh fruits or
18 vegetables; or

19 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
20 manufactured by the seller by canning, preserving, freezing,
21 processing, or dehydrating fresh fruits or vegetables and sold to
22 purchasers who transport in the ordinary course of business the goods
23 out of this state. A person taking an exemption under this subsection
24 (1)(b) must keep and preserve records for the period required by RCW
25 82.32.070 establishing that the goods were transported by the purchaser
26 in the ordinary course of business out of this state.

27 (2)(a) "Fruit or vegetable products" means:

28 (i) Products comprised exclusively of fruits, vegetables, or both;
29 and

30 (ii) Products comprised of fruits, vegetables, or both, and which
31 may also contain water, sugar, salt, seasonings, preservatives,
32 binders, stabilizers, flavorings, yeast, and similar substances.
33 However, the amount of all ingredients contained in the product, other
34 than fruits, vegetables, and water, may not exceed the amount of fruits
35 and vegetables contained in the product measured by weight or volume.

36 (b) "Fruit or vegetable products" includes only products that are
37 intended for human consumption as food or animal consumption as feed.

1 (3) This section expires July 1, 2012.

2 **Sec. 604.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
3 2009 c 162 s 34 are each reenacted and amended to read as follows:

4 (1) Upon every person engaging within this state in the business of
5 manufacturing:

6 (a) Wheat into flour, barley into pearl barley, soybeans into
7 soybean oil, canola into canola oil, canola meal, or canola by-
8 products, or sunflower seeds into sunflower oil; as to such persons the
9 amount of tax with respect to such business (~~(shall be)~~) is equal to
10 the value of the flour, pearl barley, oil, canola meal, or canola by-
11 product manufactured, multiplied by the rate of 0.138 percent;

12 (b) Beginning July 1, 2012, seafood products that remain in a raw,
13 raw frozen, or raw salted state at the completion of the manufacturing
14 by that person; or selling manufactured seafood products that remain in
15 a raw, raw frozen, or raw salted state at the completion of the
16 manufacturing, to purchasers who transport in the ordinary course of
17 business the goods out of this state; as to such persons the amount of
18 tax with respect to such business (~~(shall be)~~) is equal to the value of
19 the products manufactured or the gross proceeds derived from such
20 sales, multiplied by the rate of 0.138 percent. Sellers must keep and
21 preserve records for the period required by RCW 82.32.070 establishing
22 that the goods were transported by the purchaser in the ordinary course
23 of business out of this state;

24 (c) Beginning July 1, 2012, dairy products that as of September 20,
25 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
26 including by-products from the manufacturing of the dairy products such
27 as whey and casein; or selling the same to purchasers who transport in
28 the ordinary course of business the goods out of state; as to such
29 persons the tax imposed (~~(shall be)~~) is equal to the value of the
30 products manufactured or the gross proceeds derived from such sales
31 multiplied by the rate of 0.138 percent. Sellers must keep and
32 preserve records for the period required by RCW 82.32.070 establishing
33 that the goods were transported by the purchaser in the ordinary course
34 of business out of this state;

35 (d)(i) Beginning July 1, 2012, fruit(~~(s)~~) or vegetable(~~(s)~~)
36 products by canning, preserving, freezing, processing, or dehydrating
37 fresh fruits or vegetables, or selling at wholesale fruit(~~(s)~~) or

1 vegetable(~~s~~) products manufactured by the seller by canning,
2 preserving, freezing, processing, or dehydrating fresh fruits or
3 vegetables and sold to purchasers who transport in the ordinary course
4 of business the goods out of this state; as to such persons the amount
5 of tax with respect to such business (~~shall be~~) is equal to the value
6 of the products manufactured or the gross proceeds derived from such
7 sales multiplied by the rate of 0.138 percent. Sellers must keep and
8 preserve records for the period required by RCW 82.32.070 establishing
9 that the goods were transported by the purchaser in the ordinary course
10 of business out of this state;

11 (ii) For purposes of this subsection, "fruit or vegetable products"
12 means:

13 (A) Products comprised exclusively of fruits, vegetables, or both;
14 or

15 (B) Products comprised of fruits, vegetables, or both, and which
16 may also contain water, sugar, salt, seasonings, preservatives,
17 binders, stabilizers, flavorings, yeast, and similar substances.
18 However, the amount of all ingredients contained in the product, other
19 than fruits, vegetables, and water, may not exceed the amount of fruits
20 and vegetables contained in the product measured by weight or volume;

21 (iii) "Fruit and vegetable products" includes only products that
22 are intended for human consumption as food or animal consumption as
23 feed;

24 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
25 feedstock, as those terms are defined in RCW 82.29A.135; as to such
26 persons the amount of tax with respect to the business (~~shall be~~) is
27 equal to the value of alcohol fuel, biodiesel fuel, or biodiesel
28 feedstock manufactured, multiplied by the rate of 0.138 percent; and

29 (f) Alcohol fuel or wood biomass fuel, as those terms are defined
30 in RCW 82.29A.135; as to such persons the amount of tax with respect to
31 the business (~~shall be~~) is equal to the value of alcohol fuel or wood
32 biomass fuel manufactured, multiplied by the rate of 0.138 percent.

33 (2) Upon every person engaging within this state in the business of
34 splitting or processing dried peas; as to such persons the amount of
35 tax with respect to such business (~~shall be~~) is equal to the value of
36 the peas split or processed, multiplied by the rate of 0.138 percent.

37 (3) Upon every nonprofit corporation and nonprofit association
38 engaging within this state in research and development, as to such

1 corporations and associations, the amount of tax with respect to such
2 activities (~~(shall be)~~) is equal to the gross income derived from such
3 activities multiplied by the rate of 0.484 percent.

4 ~~(4) ((Upon every person engaging within this state in the business
5 of slaughtering, breaking and/or processing perishable meat products
6 and/or selling the same at wholesale only and not at retail; as to such
7 persons the tax imposed shall be equal to the gross proceeds derived
8 from such sales multiplied by the rate of 0.138 percent.~~

9 ~~(5))~~ Upon every person engaging within this state in the business
10 of acting as a travel agent or tour operator; as to such persons the
11 amount of the tax with respect to such activities (~~(shall be)~~) is equal
12 to the gross income derived from such activities multiplied by the rate
13 of 0.275 percent.

14 ~~((+6))~~ (5) Upon every person engaging within this state in
15 business as an international steamship agent, international customs
16 house broker, international freight forwarder, vessel and/or cargo
17 charter broker in foreign commerce, and/or international air cargo
18 agent; as to such persons the amount of the tax with respect to only
19 international activities (~~(shall be)~~) is equal to the gross income
20 derived from such activities multiplied by the rate of 0.275 percent.

21 ~~((+7))~~ (6) Upon every person engaging within this state in the
22 business of stevedoring and associated activities pertinent to the
23 movement of goods and commodities in waterborne interstate or foreign
24 commerce; as to such persons the amount of tax with respect to such
25 business (~~(shall be)~~) is equal to the gross proceeds derived from such
26 activities multiplied by the rate of 0.275 percent. Persons subject to
27 taxation under this subsection (~~(shall be)~~) are exempt from payment of
28 taxes imposed by chapter 82.16 RCW for that portion of their business
29 subject to taxation under this subsection. Stevedoring and associated
30 activities pertinent to the conduct of goods and commodities in
31 waterborne interstate or foreign commerce are defined as all activities
32 of a labor, service or transportation nature whereby cargo may be
33 loaded or unloaded to or from vessels or barges, passing over, onto or
34 under a wharf, pier, or similar structure; cargo may be moved to a
35 warehouse or similar holding or storage yard or area to await further
36 movement in import or export or may move to a consolidation freight
37 station and be stuffed, unstuffed, containerized, separated or
38 otherwise segregated or aggregated for delivery or loaded on any mode

1 of transportation for delivery to its consignee. Specific activities
2 included in this definition are: Wharfage, handling, loading,
3 unloading, moving of cargo to a convenient place of delivery to the
4 consignee or a convenient place for further movement to export mode;
5 documentation services in connection with the receipt, delivery,
6 checking, care, custody and control of cargo required in the transfer
7 of cargo; imported automobile handling prior to delivery to consignee;
8 terminal stevedoring and incidental vessel services, including but not
9 limited to plugging and unplugging refrigerator service to containers,
10 trailers, and other refrigerated cargo receptacles, and securing ship
11 hatch covers.

12 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
13 business of disposing of low-level waste, as defined in RCW 43.145.010;
14 as to such persons the amount of the tax with respect to such business
15 ~~((shall be))~~ is equal to the gross income of the business, excluding
16 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
17 3.3 percent.

18 (b) If the gross income of the taxpayer is attributable to
19 activities both within and without this state, the gross income
20 attributable to this state ~~((shall))~~ must be determined in accordance
21 with the methods of apportionment required under RCW 82.04.460.

22 ~~((+9))~~ (8) Upon every person engaging within this state as an
23 insurance producer or title insurance agent licensed under chapter
24 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
25 to such persons, the amount of the tax with respect to such licensed
26 activities ~~((shall be))~~ is equal to the gross income of such business
27 multiplied by the rate of 0.484 percent.

28 ~~((+10))~~ (9) Upon every person engaging within this state in
29 business as a hospital, as defined in chapter 70.41 RCW, that is
30 operated as a nonprofit corporation or by the state or any of its
31 political subdivisions, as to such persons, the amount of tax with
32 respect to such activities ~~((shall be))~~ is equal to the gross income of
33 the business multiplied by the rate of 0.75 percent through June 30,
34 1995, and 1.5 percent thereafter.

35 ~~((+11))~~ (10)(a) Beginning October 1, 2005, upon every person
36 engaging within this state in the business of manufacturing commercial
37 airplanes, or components of such airplanes, or making sales, at retail
38 or wholesale, of commercial airplanes or components of such airplanes,

1 manufactured by the seller, as to such persons the amount of tax with
2 respect to such business (~~shall~~), in the case of manufacturers,
3 (~~be~~) is equal to the value of the product manufactured and the gross
4 proceeds of sales of the product manufactured, or in the case of
5 processors for hire, (~~be~~) is equal to the gross income of the
6 business, multiplied by the rate of:

7 (i) 0.4235 percent from October 1, 2005, through (~~the later of~~)
8 June 30, 2007; and

9 (ii) 0.2904 percent beginning July 1, 2007.

10 (b) Beginning July 1, 2008, upon every person who is not eligible
11 to report under the provisions of (a) of this subsection (~~(11)~~) (10)
12 and is engaging within this state in the business of manufacturing
13 tooling specifically designed for use in manufacturing commercial
14 airplanes or components of such airplanes, or making sales, at retail
15 or wholesale, of such tooling manufactured by the seller, as to such
16 persons the amount of tax with respect to such business (~~shall~~), in
17 the case of manufacturers, (~~be~~) is equal to the value of the product
18 manufactured and the gross proceeds of sales of the product
19 manufactured, or in the case of processors for hire, (~~be~~) is equal to
20 the gross income of the business, multiplied by the rate of 0.2904
21 percent.

22 (c) For the purposes of this subsection (~~(11)~~) (10), "commercial
23 airplane" and "component" have the same meanings as provided in RCW
24 82.32.550.

25 (d) In addition to all other requirements under this title, a
26 person eligible for the tax rate under this subsection (~~(11)~~) (10)
27 must report as required under RCW 82.32.545.

28 (e) This subsection (~~(11)~~) (10) does not apply on and after July
29 1, 2024.

30 (~~(12)~~) (11)(a) Until July 1, 2024, upon every person engaging
31 within this state in the business of extracting timber or extracting
32 for hire timber; as to such persons the amount of tax with respect to
33 the business (~~shall~~), in the case of extractors, (~~be~~) is equal to
34 the value of products, including by-products, extracted, or in the case
35 of extractors for hire, (~~be~~) is equal to the gross income of the
36 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
37 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
38 June 30, 2024.

1 (b) Until July 1, 2024, upon every person engaging within this
2 state in the business of manufacturing or processing for hire: (i)
3 Timber into timber products or wood products; or (ii) timber products
4 into other timber products or wood products; as to such persons the
5 amount of the tax with respect to the business (~~shall~~), in the case
6 of manufacturers, (~~be~~) is equal to the value of products, including
7 by-products, manufactured, or in the case of processors for hire,
8 (~~be~~) is equal to the gross income of the business, multiplied by the
9 rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and
10 0.2904 percent from July 1, 2007, through June 30, 2024.

11 (c) Until July 1, 2024, upon every person engaging within this
12 state in the business of selling at wholesale: (i) Timber extracted by
13 that person; (ii) timber products manufactured by that person from
14 timber or other timber products; or (iii) wood products manufactured by
15 that person from timber or timber products; as to such persons the
16 amount of the tax with respect to the business (~~shall be~~) is equal to
17 the gross proceeds of sales of the timber, timber products, or wood
18 products multiplied by the rate of 0.4235 percent from July 1, 2006,
19 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
20 June 30, 2024.

21 (d) Until July 1, 2024, upon every person engaging within this
22 state in the business of selling standing timber; as to such persons
23 the amount of the tax with respect to the business (~~shall be~~) is
24 equal to the gross income of the business multiplied by the rate of
25 0.2904 percent. For purposes of this subsection (~~(+12+)~~) (11)(d),
26 "selling standing timber" means the sale of timber apart from the land,
27 where the buyer is required to sever the timber within thirty months
28 from the date of the original contract, regardless of the method of
29 payment for the timber and whether title to the timber transfers
30 before, upon, or after severance.

31 (e) For purposes of this subsection, the following definitions
32 apply:

33 (i) "Biocomposite surface products" means surface material products
34 containing, by weight or volume, more than fifty percent recycled paper
35 and that also use nonpetroleum-based phenolic resin as a bonding agent.

36 (ii) "Paper and paper products" means products made of interwoven
37 cellulosic fibers held together largely by hydrogen bonding. "Paper
38 and paper products" includes newsprint; office, printing, fine, and

1 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
2 kraft bag, construction, and other kraft industrial papers; paperboard,
3 liquid packaging containers, containerboard, corrugated, and solid-
4 fiber containers including linerboard and corrugated medium; and
5 related types of cellulosic products containing primarily, by weight or
6 volume, cellulosic materials. "Paper and paper products" does not
7 include books, newspapers, magazines, periodicals, and other printed
8 publications, advertising materials, calendars, and similar types of
9 printed materials.

10 (iii) "Recycled paper" means paper and paper products having fifty
11 percent or more of their fiber content that comes from postconsumer
12 waste. For purposes of this subsection (~~((+12+))~~) (11)(e)(iii),
13 "postconsumer waste" means a finished material that would normally be
14 disposed of as solid waste, having completed its life cycle as a
15 consumer item.

16 (iv) "Timber" means forest trees, standing or down, on privately or
17 publicly owned land. "Timber" does not include Christmas trees that
18 are cultivated by agricultural methods or short-rotation hardwoods as
19 defined in RCW 84.33.035.

20 (v) "Timber products" means:

21 (A) Logs, wood chips, sawdust, wood waste, and similar products
22 obtained wholly from the processing of timber, short-rotation hardwoods
23 as defined in RCW 84.33.035, or both;

24 (B) Pulp, including market pulp and pulp derived from recovered
25 paper or paper products; and

26 (C) Recycled paper, but only when used in the manufacture of
27 biocomposite surface products.

28 (vi) "Wood products" means paper and paper products; dimensional
29 lumber; engineered wood products such as particleboard, oriented strand
30 board, medium density fiberboard, and plywood; wood doors; wood
31 windows; and biocomposite surface products.

32 (~~((+13+))~~) (12) Upon every person engaging within this state in
33 inspecting, testing, labeling, and storing canned salmon owned by
34 another person, as to such persons, the amount of tax with respect to
35 such activities (~~((shall be))~~) is equal to the gross income derived from
36 such activities multiplied by the rate of 0.484 percent.

37 (~~((+14+))~~) (13) Upon every person engaging within this state in the

1 business of printing a newspaper, publishing a newspaper, or both, the
2 amount of tax on such business is equal to the gross income of the
3 business multiplied by the rate of 0.2904 percent.

4 **Sec. 605.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
5 as follows:

6 (1) Upon every person engaging within this state in the business of
7 making sales at retail, except persons taxable as retailers under other
8 provisions of this chapter, as to such persons, the amount of tax with
9 respect to such business (~~(shall be)~~) is equal to the gross proceeds of
10 sales of the business, multiplied by the rate of 0.471 percent.

11 (2) Upon every person engaging within this state in the business of
12 making sales at retail that are exempt from the tax imposed under
13 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
14 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11)~~) (10) or
15 subsection (3) of this section, as to such persons, the amount of tax
16 with respect to such business (~~(shall be)~~) is equal to the gross
17 proceeds of sales of the business, multiplied by the rate of 0.484
18 percent.

19 (3) Upon every person classified by the federal aviation
20 administration as a federal aviation regulation part 145 certificated
21 repair station and that is engaging within this state in the business
22 of making sales at retail that are exempt from the tax imposed under
23 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
24 82.08.0263, as to such persons, the amount of tax with respect to such
25 business (~~(shall be)~~) is equal to the gross proceeds of sales of the
26 business, multiplied by the rate of .2904 percent.

27 **Sec. 606.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
28 as follows:

29 (1) Upon every person engaging within this state in the business of
30 making sales at retail, except persons taxable as retailers under other
31 provisions of this chapter, as to such persons, the amount of tax with
32 respect to such business (~~(shall be)~~) is equal to the gross proceeds of
33 sales of the business, multiplied by the rate of 0.471 percent.

34 (2) Upon every person engaging within this state in the business of
35 making sales at retail that are exempt from the tax imposed under
36 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or

1 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11)~~) (10), as
2 to such persons, the amount of tax with respect to such business
3 (~~(shall be)~~) is equal to the gross proceeds of sales of the business,
4 multiplied by the rate of 0.484 percent.

5 **Sec. 607.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
6 each reenacted and amended to read as follows:

7 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12)~~)
8 (11), a surcharge is imposed on those persons who are subject to any of
9 the taxes imposed under RCW 82.04.260(~~(+12)~~) (11). Except as
10 otherwise provided in this section, the surcharge is equal to 0.052
11 percent. The surcharge is added to the rates provided in RCW
12 82.04.260(~~(+12)~~) (11) (a), (b), (c), and (d). The surcharge and this
13 section expire July 1, 2024.

14 (2) All receipts from the surcharge imposed under this section
15 (~~(shall)~~) must be deposited into the forest and fish support account
16 created in RCW 76.09.405.

17 (3)(a) The surcharge imposed under this section (~~(shall be)~~) is
18 suspended if:

19 (i) Receipts from the surcharge total at least eight million
20 dollars during any fiscal biennium; or

21 (ii) The office of financial management certifies to the department
22 that the federal government has appropriated at least two million
23 dollars for participation in forest and fish report-related activities
24 by federally recognized Indian tribes located within the geographical
25 boundaries of the state of Washington for any federal fiscal year.

26 (b)(i) The suspension of the surcharge under (a)(i) of this
27 subsection (3) (~~(shall)~~) takes effect on the first day of the calendar
28 month that is at least thirty days after the end of the month during
29 which the department determines that receipts from the surcharge total
30 at least eight million dollars during the fiscal biennium. The
31 surcharge (~~(shall be)~~) is imposed again at the beginning of the
32 following fiscal biennium.

33 (ii) The suspension of the surcharge under (a)(ii) of this
34 subsection (3) (~~(shall)~~) takes effect on the later of the first day of
35 October of any federal fiscal year for which the federal government
36 appropriates at least two million dollars for participation in forest
37 and fish report-related activities by federally recognized Indian

1 tribes located within the geographical boundaries of the state of
2 Washington, or the first day of a calendar month that is at least
3 thirty days following the date that the office of financial management
4 makes a certification to the department under subsection (5) of this
5 section. The surcharge (~~shall be~~) is imposed again on the first day
6 of the following July.

7 (4)(a) If, by October 1st of any federal fiscal year, the office of
8 financial management certifies to the department that the federal
9 government has appropriated funds for participation in forest and fish
10 report-related activities by federally recognized Indian tribes located
11 within the geographical boundaries of the state of Washington but the
12 amount of the appropriation is less than two million dollars, the
13 department (~~shall~~) must adjust the surcharge in accordance with this
14 subsection.

15 (b) The department (~~shall~~) must adjust the surcharge by an amount
16 that the department estimates will cause the amount of funds deposited
17 into the forest and fish support account for the state fiscal year that
18 begins July 1st and that includes the beginning of the federal fiscal
19 year for which the federal appropriation is made, to be reduced by
20 twice the amount of the federal appropriation for participation in
21 forest and fish report-related activities by federally recognized
22 Indian tribes located within the geographical boundaries of the state
23 of Washington.

24 (c) Any adjustment in the surcharge (~~shall~~) takes effect at the
25 beginning of a calendar month that is at least thirty days after the
26 date that the office of financial management makes the certification
27 under subsection (5) of this section.

28 (d) The surcharge (~~shall be~~) is imposed again at the rate
29 provided in subsection (1) of this section on the first day of the
30 following state fiscal year unless the surcharge is suspended under
31 subsection (3) of this section or adjusted for that fiscal year under
32 this subsection.

33 (e) Adjustments of the amount of the surcharge by the department
34 are final and (~~shall~~) may not be used to challenge the validity of
35 the surcharge imposed under this section.

36 (f) The department (~~shall~~) must provide timely notice to affected
37 taxpayers of the suspension of the surcharge or an adjustment of the
38 surcharge.

1 (5) The office of financial management (~~shall~~) must make the
2 certification to the department as to the status of federal
3 appropriations for tribal participation in forest and fish report-
4 related activities.

5 **Sec. 608.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
6 as follows:

7 (1) The amount of tax with respect to a qualified grocery
8 distribution cooperative's sales of groceries or related goods for
9 resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~)
10 section 602 of this act, to customer-owners of the grocery distribution
11 cooperative is equal to the gross proceeds of sales of the grocery
12 distribution cooperative multiplied by the rate of one and one-half
13 percent.

14 (2) A qualified grocery distribution cooperative is allowed a
15 deduction from the gross proceeds of sales of groceries or related
16 goods for resale, excluding items subject to tax under (~~RCW
17 82.04.260(4)~~) section 602 of this act, to customer-owners of the
18 grocery distribution cooperative that is equal to the portion of the
19 gross proceeds of sales for resale that represents the actual cost of
20 the merchandise sold by the grocery distribution cooperative to
21 customer-owners.

22 (3) The definitions in this subsection apply throughout this
23 section unless the context clearly requires otherwise.

24 (a) "Grocery distribution cooperative" means an entity that sells
25 groceries and related items to customer-owners of the grocery
26 distribution cooperative and has customer-owners, in the aggregate, who
27 own a majority of the outstanding ownership interests of the grocery
28 distribution cooperative or of the entity controlling the grocery
29 distribution cooperative. "Grocery distribution cooperative" includes
30 an entity that controls a grocery distribution cooperative.

31 (b) "Qualified grocery distribution cooperative" means:

32 (i) A grocery distribution cooperative that has been determined by
33 a court of record of the state of Washington to be not engaged in
34 wholesaling or making sales at wholesale, within the meaning of RCW
35 82.04.270 or any similar provision of a municipal ordinance that
36 imposes a tax on gross receipts, gross proceeds of sales, or gross

1 income, with respect to purchases made by customer-owners, and
2 subsequently changes its form of doing business to make sales at
3 wholesale of groceries or related items to its customer-owners; or

4 (ii) A grocery distribution cooperative that has acquired
5 substantially all of the assets of a grocery distribution cooperative
6 described in (b)(i) of this subsection.

7 (c) "Customer-owner" means a person who has an ownership interest
8 in a grocery distribution cooperative and purchases groceries and
9 related items at wholesale from that grocery distribution cooperative.

10 (d) "Controlling" means holding fifty percent or more of the voting
11 interests of an entity and having at least equal power to direct or
12 cause the direction of the management and policies of the entity,
13 whether through the ownership of voting securities, by contract, or
14 otherwise.

15 **Sec. 609.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
16 as follows:

17 This chapter does not apply to any sale of standing timber excluded
18 from the definition of "sale" in RCW 82.45.010(3). The definitions in
19 RCW 82.04.260(~~((+12+))~~) (11) apply to this section.

20 **Sec. 610.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
21 each reenacted and amended to read as follows:

22 (1) Every person engaged in activities that are subject to tax
23 under two or more provisions of RCW 82.04.230 through 82.04.298,
24 inclusive, (~~((shall be))~~) is taxable under each provision applicable to
25 those activities.

26 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
27 82.04.294(2), or 82.04.260 (1) (b), (c), (~~((+4+))~~) or (d), (10), or
28 (11), or (~~((+12+))~~) section 602(2) of this act with respect to selling
29 products in this state, including those persons who are also taxable
30 under RCW 82.04.261, (~~((shall be))~~) are allowed a credit against those
31 taxes for any (a) manufacturing taxes paid with respect to the
32 manufacturing of products so sold in this state, and/or (b) extracting
33 taxes paid with respect to the extracting of products so sold in this
34 state or ingredients of products so sold in this state. Extracting
35 taxes taken as credit under subsection (3) of this section may also be
36 taken under this subsection, if otherwise allowable under this

1 subsection. The amount of the credit (~~(shall)~~) may not exceed the tax
2 liability arising under this chapter with respect to the sale of those
3 products.

4 (3) Persons taxable as manufacturers under RCW 82.04.240 or
5 82.04.260 (1)(b) or (~~(+12)~~) (11), including those persons who are also
6 taxable under RCW 82.04.261, (~~(shall be)~~) are allowed a credit against
7 those taxes for any extracting taxes paid with respect to extracting
8 the ingredients of the products so manufactured in this state. The
9 amount of the credit (~~(shall)~~) may not exceed the tax liability arising
10 under this chapter with respect to the manufacturing of those products.

11 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
12 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~(+4)~~), (10), or
13 (11), or (~~(+12)~~) section 602(1) of this act, including those persons
14 who are also taxable under RCW 82.04.261, with respect to extracting or
15 manufacturing products in this state (~~(shall be)~~) are allowed a credit
16 against those taxes for any (i) gross receipts taxes paid to another
17 state with respect to the sales of the products so extracted or
18 manufactured in this state, (ii) manufacturing taxes paid with respect
19 to the manufacturing of products using ingredients so extracted in this
20 state, or (iii) manufacturing taxes paid with respect to manufacturing
21 activities completed in another state for products so manufactured in
22 this state. The amount of the credit (~~(shall)~~) may not exceed the tax
23 liability arising under this chapter with respect to the extraction or
24 manufacturing of those products.

25 (5) For the purpose of this section:

26 (a) "Gross receipts tax" means a tax:

27 (i) Which is imposed on or measured by the gross volume of
28 business, in terms of gross receipts or in other terms, and in the
29 determination of which the deductions allowed would not constitute the
30 tax an income tax or value added tax; and

31 (ii) Which is also not, pursuant to law or custom, separately
32 stated from the sales price.

33 (b) "State" means (i) the state of Washington, (ii) a state of the
34 United States other than Washington, or any political subdivision of
35 such other state, (iii) the District of Columbia, and (iv) any foreign
36 country or political subdivision thereof.

37 (c) "Manufacturing tax" means a gross receipts tax imposed on the
38 act or privilege of engaging in business as a manufacturer, and

1 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
2 82.04.2909(1), 82.04.260 (1), (2), (~~(4)~~) (10), and (11), (~~and~~
3 ~~(12)~~) section 602(1) of this act, and 82.04.294(1); (ii) the tax
4 imposed under RCW 82.04.261 on persons who are engaged in business as
5 a manufacturer; and (iii) similar gross receipts taxes paid to other
6 states.

7 (d) "Extracting tax" means a gross receipts tax imposed on the act
8 or privilege of engaging in business as an extractor, and includes (i)
9 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~(12)~~)
10 (11); (ii) the tax imposed under RCW 82.04.261 on persons who are
11 engaged in business as an extractor; and (iii) similar gross receipts
12 taxes paid to other states.

13 (e) "Business", "manufacturer", "extractor", and other terms used
14 in this section have the meanings given in RCW 82.04.020 through
15 82.04.212, notwithstanding the use of those terms in the context of
16 describing taxes imposed by other states.

17 **Sec. 611.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to
18 read as follows:

19 (1) In computing the tax imposed under this chapter, a credit is
20 allowed for property taxes and leasehold excise taxes paid during the
21 calendar year.

22 (2) The credit is equal to:

23 (a)(i)(A) Property taxes paid on buildings, and land upon which the
24 buildings are located, constructed after December 1, 2003, and used
25 exclusively in manufacturing commercial airplanes or components of such
26 airplanes; and

27 (B) Leasehold excise taxes paid with respect to buildings
28 constructed after January 1, 2006, the land upon which the buildings
29 are located, or both, if the buildings are used exclusively in
30 manufacturing commercial airplanes or components of such airplanes; and

31 (C) Property taxes or leasehold excise taxes paid on, or with
32 respect to, buildings constructed after June 30, 2008, the land upon
33 which the buildings are located, or both, and used exclusively for
34 aerospace product development or in providing aerospace services, by
35 persons not within the scope of (a)(i)(A) and (B) of this subsection

36 (2) and are: (I) Engaged in manufacturing tooling specifically

1 designed for use in manufacturing commercial airplanes or their
2 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or
3 (ii) Property taxes attributable to an increase in assessed value
4 due to the renovation or expansion, after: (A) December 1, 2003, of a
5 building used exclusively in manufacturing commercial airplanes or
6 components of such airplanes; and (B) June 30, 2008, of buildings used
7 exclusively for aerospace product development or in providing aerospace
8 services, by persons not within the scope of (a)(ii)(A) of this
9 subsection (2) and are: (I) Engaged in manufacturing tooling
10 specifically designed for use in manufacturing commercial airplanes or
11 their components; or (II) taxable under RCW 82.04.290(3) or
12 82.04.250(3); and

13 (b) An amount equal to:

14 (i)(A) Property taxes paid, by persons taxable under RCW
15 82.04.260(~~((+11))~~) (10)(a), on machinery and equipment exempt under RCW
16 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

17 (B) Property taxes paid, by persons taxable under RCW
18 82.04.260(~~((+11))~~) (10)(b), on machinery and equipment exempt under RCW
19 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

20 (C) Property taxes paid, by persons taxable under RCW
21 (~~(82.04.0250(3) — [82.04.250(3)]~~) 82.04.250(3) or 82.04.290(3), on
22 computer hardware, computer peripherals, and software exempt under RCW
23 82.08.975 or 82.12.975 and acquired after June 30, 2008.

24 (ii) For purposes of determining the amount eligible for credit
25 under (i)(A) and (B) of this subsection (2)(b), the amount of property
26 taxes paid is multiplied by a fraction.

27 (~~((+I))~~) (A) The numerator of the fraction is the total taxable
28 amount subject to the tax imposed under RCW 82.04.260(~~((+11))~~) (10) (a)
29 or (b) on the applicable business activities of manufacturing
30 commercial airplanes, components of such airplanes, or tooling
31 specifically designed for use in the manufacturing of commercial
32 airplanes or components of such airplanes.

33 (~~((+II))~~) (B) The denominator of the fraction is the total taxable
34 amount subject to the tax imposed under all manufacturing
35 classifications in chapter 82.04 RCW.

36 (~~((+III))~~) (C) For purposes of both the numerator and denominator of
37 the fraction, the total taxable amount refers to the total taxable
38 amount required to be reported on the person's returns for the calendar

1 year before the calendar year in which the credit under this section is
2 earned. The department may provide for an alternative method for
3 calculating the numerator in cases where the tax rate provided in RCW
4 82.04.260(~~((+11+))~~) (10) for manufacturing was not in effect during the
5 full calendar year before the calendar year in which the credit under
6 this section is earned.

7 ~~((+IV+))~~ (D) No credit is available under (b)(i)(A) or (B) of this
8 subsection (2) if either the numerator or the denominator of the
9 fraction is zero. If the fraction is greater than or equal to nine-
10 tenths, then the fraction is rounded to one.

11 ~~((+V+))~~ (E) As used in ~~((+III+))~~ (b)(ii)(C) of this subsection
12 (2)~~((+b)(ii)(C+))~~, "returns" means the tax returns for which the tax
13 imposed under this chapter is reported to the department.

14 (3) The definitions in this subsection apply throughout this
15 section, unless the context clearly indicates otherwise.

16 (a) "Aerospace product development" has the same meaning as
17 provided in RCW 82.04.4461.

18 (b) "Aerospace services" has the same meaning given in RCW
19 82.08.975.

20 (c) "Commercial airplane" and "component" have the same meanings as
21 provided in RCW 82.32.550.

22 (4) A credit earned during one calendar year may be carried over to
23 be credited against taxes incurred in a subsequent calendar year, but
24 may not be carried over a second year. No refunds may be granted for
25 credits under this section.

26 (5) In addition to all other requirements under this title, a
27 person taking the credit under this section must report as required
28 under RCW 82.32.545.

29 (6) This section expires July 1, 2024.

30 **Sec. 612.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
31 read as follows:

32 (1) The tax levied by RCW 82.08.020 does not apply to sales, to a
33 printer or publisher, of computer equipment, including repair parts and
34 replacement parts for such equipment, when the computer equipment is
35 used primarily in the printing or publishing of any printed material,
36 or to sales of or charges made for labor and services rendered in

1 respect to installing, repairing, cleaning, altering, or improving the
2 computer equipment. This exemption applies only to computer equipment
3 not otherwise exempt under RCW 82.08.02565.

4 (2) A person taking the exemption under this section must keep
5 records necessary for the department to verify eligibility under this
6 section. This exemption is available only when the purchaser provides
7 the seller with an exemption certificate in a form and manner
8 prescribed by the department. The seller (~~shall~~) must retain a copy
9 of the certificate for the seller's files.

10 (3) The definitions in this subsection (3) apply throughout this
11 section, unless the context clearly requires otherwise.

12 (a) "Computer" has the same meaning as in RCW 82.04.215.

13 (b) "Computer equipment" means a computer and the associated
14 physical components that constitute a computer system, including
15 monitors, keyboards, printers, modems, scanners, pointing devices, and
16 other computer peripheral equipment, cables, servers, and routers.
17 "Computer equipment" also includes digital cameras and computer
18 software.

19 (c) "Computer software" has the same meaning as in RCW 82.04.215.

20 (d) "Primarily" means greater than fifty percent as measured by
21 time.

22 (e) "Printer or publisher" means a person, as defined in RCW
23 82.04.030, who is subject to tax under RCW 82.04.260(~~(+14)~~) (13) or
24 82.04.280(1).

25 (4) "Computer equipment" does not include computer equipment that
26 is used primarily for administrative purposes including but not limited
27 to payroll processing, accounting, customer service, telemarketing, and
28 collection. If computer equipment is used simultaneously for
29 administrative and nonadministrative purposes, the administrative use
30 (~~shall~~) must be disregarded during the period of simultaneous use for
31 purposes of determining whether the computer equipment is used
32 primarily for administrative purposes.

33 **Sec. 613.** RCW 82.32.545 and 2008 c 81 s 10 are each amended to
34 read as follows:

35 (1) The legislature finds that accountability and effectiveness are
36 important aspects of setting tax policy. In order to make policy

1 choices regarding the best use of limited state resources the
2 legislature needs information on how a tax incentive is used.

3 (2)(a) A person who reports taxes under RCW 82.04.260(~~((+11))~~) (10),
4 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit
5 under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and
6 82.04.4463 (~~((shall))~~) must make an annual report to the department
7 detailing employment, wages, and employer-provided health and
8 retirement benefits for employment positions in Washington. However,
9 persons engaged in manufacturing commercial airplanes or components of
10 such airplanes may report employment, wage, and benefit information per
11 job at the manufacturing site. The report (~~((shall))~~) may not include
12 names of employees. The report (~~((shall))~~) must also detail employment
13 by the total number of full-time, part-time, and temporary positions.
14 The first report filed under this subsection (~~((shall))~~) must include
15 employment, wage, and benefit information for the twelve-month period
16 immediately before first use of a preferential tax rate under RCW
17 82.04.260(~~((+11))~~) (10), 82.04.250(3), or 82.04.290(3), or tax exemption
18 or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137,
19 84.36.655, and 82.04.4463, unless a survey covering this twelve-month
20 period was filed as required by a statute repealed by chapter 81, Laws
21 of 2008. The report is due by March 31st following any year in which
22 a preferential tax rate under RCW 82.04.260(~~((+11))~~) (10), 82.04.250(3),
23 or 82.04.290(3), is used, or tax exemption or credit under RCW
24 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463
25 is taken. This information is not subject to the confidentiality
26 provisions of RCW 82.32.330 and may be disclosed to the public upon
27 request.

28 (b) If a person fails to submit an annual report under (a) of this
29 subsection by the due date of the report, the department (~~((shall))~~) must
30 declare the amount of taxes exempted or credited, or reduced in the
31 case of the preferential business and occupation tax rate, for that
32 year to be immediately due and payable. Excise taxes payable under
33 this subsection are subject to interest but not penalties, as provided
34 under this chapter. This information is not subject to the
35 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
36 public upon request.

37 (3) By November 1, 2010, and by November 1, 2023, the fiscal
38 committees of the house of representatives and the senate, in

1 consultation with the department, (~~shall~~) must report to the
2 legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp.
3 sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in
4 regard to keeping Washington competitive. The report (~~shall~~) must
5 measure the effect of these laws on job retention, net jobs created for
6 Washington residents, company growth, diversification of the state's
7 economy, cluster dynamics, and other factors as the committees select.
8 The reports (~~shall~~) must include a discussion of principles to apply
9 in evaluating whether the legislature should reenact any or all of the
10 tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177,
11 Laws of 2006, and chapter 81, Laws of 2008.

12 **Sec. 614.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
13 read as follows:

14 ~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the~~
15 ~~first day of the month in which the governor and a manufacturer of~~
16 ~~commercial airplanes sign a memorandum of agreement regarding an~~
17 ~~affirmative final decision to site a significant commercial airplane~~
18 ~~final assembly facility in Washington state. The department shall~~
19 ~~provide notice of the effective date of chapter 1, Laws of 2003 2nd sp.~~
20 ~~sess. to affected taxpayers, the legislature, and others as deemed~~
21 ~~appropriate by the department.~~

22 ~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
23 ~~siting of a significant commercial airplane final assembly facility in~~
24 ~~the state of Washington. If a memorandum of agreement under subsection~~
25 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
26 ~~2003 2nd sp. sess. is null and void.~~

27 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
28 ~~2007.~~

29 ~~(ii) If on December 31, 2007, final assembly of a superefficient~~
30 ~~airplane has not begun in Washington state, the department shall~~
31 ~~provide notice of such to affected taxpayers, the legislature, and~~
32 ~~others as deemed appropriate by the department.~~

33 ~~(2) The definitions in this subsection apply throughout this~~
34 ~~section.~~

35 ~~(a))~~ "Commercial airplane" has its ordinary meaning, which is an
36 airplane certified by the federal aviation administration for

1 transporting persons or property, and any military derivative of such
2 an airplane.

3 ~~((b))~~ (2) "Component" means a part or system certified by the
4 federal aviation administration for installation or assembly into a
5 commercial airplane.

6 ~~((c) "Final assembly of a superefficient airplane" means the
7 activity of assembling an airplane from components parts necessary for
8 its mechanical operation such that the finished commercial airplane is
9 ready to deliver to the ultimate consumer.~~

10 ~~(d) "Significant commercial airplane final assembly facility" means
11 a location with the capacity to produce at least thirty six
12 superefficient airplanes a year.~~

13 ~~(e) "Siting" means a final decision by a manufacturer to locate a
14 significant commercial airplane final assembly facility in Washington
15 state.~~

16 ~~(f))~~ (3) "Superefficient airplane" means a twin aisle airplane
17 that carries between two hundred and three hundred fifty passengers,
18 with a range of more than seven thousand two hundred nautical miles, a
19 cruising speed of approximately mach .85, and that uses fifteen to
20 twenty percent less fuel than other similar airplanes on the market.

21 **Sec. 615.** RCW 82.32.630 and 2007 c 48 s 6 are each amended to read
22 as follows:

23 (1) The legislature finds that accountability and effectiveness are
24 important aspects of setting tax policy. In order to make policy
25 choices regarding the best use of limited state resources, the
26 legislature needs information on how a tax incentive is used.

27 (2)(a) A person who reports taxes under RCW 82.04.260(~~((12) shall))~~
28 (11) must file a complete annual survey with the department. The
29 survey is due by March 31st following any year in which a person
30 reports taxes under RCW 82.04.260(~~((12))~~) (11). The department may
31 extend the due date for timely filing of annual surveys under this
32 section as provided in RCW 82.32.590. The survey (~~((shall))~~) must
33 include the amount of tax reduced under the preferential rate in RCW
34 82.04.260(~~((12))~~) (11). The survey (~~((shall))~~) must also include the
35 following information for employment positions in Washington:

36 (i) The number of total employment positions;

1 (ii) Full-time, part-time, and temporary employment positions as a
2 percent of total employment;

3 (iii) The number of employment positions according to the following
4 wage bands: Less than thirty thousand dollars; thirty thousand dollars
5 or greater, but less than sixty thousand dollars; and sixty thousand
6 dollars or greater. A wage band containing fewer than three
7 individuals may be combined with another wage band; and

8 (iv) The number of employment positions that have employer-provided
9 medical, dental, and retirement benefits, by each of the wage bands.

10 (b) The first survey filed under this subsection (~~shall~~) must
11 include employment, wage, and benefit information for the twelve-month
12 period immediately before first use of a preferential tax rate under
13 RCW 82.04.260(~~(+12+)~~) (11).

14 (c) As part of the annual survey, the department may request
15 additional information, including the amount of investment in equipment
16 used in the activities taxable under the preferential rate in RCW
17 82.04.260(~~(+12+)~~) (11), necessary to measure the results of, or
18 determine eligibility for, the preferential tax rate in RCW
19 82.04.260(~~(+12+)~~) (11).

20 (d) All information collected under this section, except the amount
21 of the tax reduced under the preferential rate in RCW 82.04.260(~~(+12+)~~)
22 (11), is deemed taxpayer information under RCW 82.32.330. Information
23 on the amount of tax reduced is not subject to the confidentiality
24 provisions of RCW 82.32.330 and may be disclosed to the public upon
25 request, except as provided in (e) of this subsection. If the amount
26 of the tax reduced as reported on the survey is different than the
27 amount actually reduced based on the taxpayer's excise tax returns or
28 otherwise allowed by the department, the amount actually reduced may be
29 disclosed.

30 (e) Persons for whom the actual amount of the tax reduction is less
31 than ten thousand dollars during the period covered by the survey may
32 request the department to treat the amount of the tax reduction as
33 confidential under RCW 82.32.330.

34 (f) Small harvesters as defined in RCW 84.33.035 are not required
35 to file the annual survey under this section.

36 (3) If a person fails to submit a complete annual survey under
37 subsection (2) of this section by the due date or any extension under
38 RCW 82.32.590, the department shall declare the amount of taxes reduced

1 under the preferential rate in RCW 82.04.260(~~(+12+)~~) (11) for the
2 period covered by the survey to be immediately due and payable. The
3 department (~~(shall)~~) must assess interest, but not penalties, on the
4 taxes. Interest (~~(shall)~~) must be assessed at the rate provided for
5 delinquent excise taxes under this chapter, retroactively to the date
6 the reduced taxes were due, and (~~(shall)~~) will accrue until the amount
7 of the reduced taxes is repaid.

8 (4) The department (~~(shall)~~) must use the information from the
9 annual survey required under subsection (2) of this section to prepare
10 summary descriptive statistics by category. The department (~~(shall)~~)
11 must report these statistics to the legislature each year by September
12 1st. The requirement to prepare and report summary descriptive
13 statistics (~~(shall)~~) ceases after September 1, 2025.

14 (5) By November 1, 2011, and November 1, 2023, the fiscal
15 committees of the house of representatives and the senate, in
16 consultation with the department, (~~(shall)~~) must report to the
17 legislature on the effectiveness of the preferential tax rate provided
18 in RCW 82.04.260(~~(+12+)~~) (11). The report shall measure the effect of
19 the preferential tax rate provided in RCW 82.04.260(~~(+12+)~~) (11) on job
20 retention, net jobs created for Washington residents, company growth,
21 and other factors as the committees select. The report (~~(shall)~~) must
22 include a discussion of principles to apply in evaluating whether the
23 legislature should continue the preferential tax rate provided in RCW
24 82.04.260(~~(+12+)~~) (11).

25 **Sec. 616.** RCW 82.32.632 and 2009 c 461 s 6 are each amended to
26 read as follows:

27 (1)(a) Every person claiming the preferential rate provided in RCW
28 82.04.260(~~(+14+)~~) (13) must file a complete annual report with the
29 department. The report is due by March 31st of the year following any
30 calendar year in which a person is eligible to claim the preferential
31 rate provided in RCW 82.04.260(~~(+14+)~~) (13). The department may extend
32 the due date for timely filing of annual reports under this section as
33 provided in RCW 82.32.590.

34 (b) The report must include information detailing employment,
35 wages, and employer-provided health and retirement benefits for
36 employment positions in Washington for the year that the preferential
37 rate was claimed. The report must not include names of employees. The

1 report must also detail employment by the total number of full-time,
2 part-time, and temporary positions for the year that the tax preference
3 was claimed.

4 (c) If a person filing a report under this section did not file a
5 report with the department in the previous calendar year, the report
6 filed under this section must also include employment, wage, and
7 benefit information for the calendar year immediately preceding the
8 calendar year for which the preferential rate provided in RCW
9 82.04.260(~~((+14+))~~) (13) was claimed.

10 (2) As part of the annual report, the department may request
11 additional information necessary to measure the results of, or
12 determine eligibility for, the preferential rate provided in RCW
13 82.04.260(~~((+14+))~~) (13).

14 (3) Other than information requested under subsection (2) of this
15 section, the information contained in an annual report filed under this
16 section is not subject to the confidentiality provisions of RCW
17 82.32.330 and may be disclosed to the public upon request.

18 (4) Except as otherwise provided by law, if a person claims the
19 preferential rate provided in RCW 82.04.260(~~((+14+))~~) (13) but fails to
20 submit a report by the due date or any extension under RCW 82.32.590,
21 the department must declare the amount of the tax preference claimed
22 for the previous calendar year to be immediately due and payable. The
23 department must assess interest, but not penalties, on the amounts due
24 under this subsection. The interest must be assessed at the rate
25 provided for delinquent taxes under this chapter, retroactively to the
26 date the tax preference was claimed, and accrues until the taxes for
27 which the tax preference was claimed are repaid. Amounts due under
28 this subsection are not subject to the confidentiality provisions of
29 RCW 82.32.330 and may be disclosed to the public upon request.

30 (5) By November 1, 2014, and November 1, 2016, the fiscal
31 committees of the house of representatives and the senate, in
32 consultation with the department, must report to the legislature on the
33 effectiveness of the preferential rate provided in RCW
34 82.04.260(~~((+14+))~~) (13). The report must measure the effect of the
35 preferential rate provided in RCW 82.04.260(~~((+14+))~~) (13) on job
36 retention, net jobs created for Washington residents, industry growth,
37 and other factors as the committees select. The report must include a

1 discussion of principles to apply in evaluating whether the legislature
2 should continue the preferential rate provided in RCW 82.04.260(~~(+14)~~)
3 (13).

4 **Sec. 617.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read
5 as follows:

6 A sale of standing timber is exempt from tax under this chapter if
7 the gross income from such sale is taxable under RCW 82.04.260(~~(+12)~~)
8 (11)(d).

9 **Sec. 618.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to
10 read as follows:

11 Notwithstanding RCW 35.102.130, a city that imposes a business and
12 occupation tax must allocate a person's gross income from the
13 activities of printing, and of publishing newspapers, periodicals, or
14 magazines, to the principal place in this state from which the
15 taxpayer's business is directed or managed. As used in this section,
16 the activities of printing, and of publishing newspapers, periodicals,
17 or magazines are those activities to which the tax rates in RCW
18 82.04.260(~~(+14)~~) (13) and 82.04.280(1) apply.

19 **Sec. 619.** RCW 48.14.080 and 2009 c 535 s 1102 are each amended to
20 read as follows:

21 (1) As to insurers, other than title insurers and taxpayers under
22 RCW 48.14.0201, the taxes imposed by this title (~~shall be~~) are in
23 lieu of all other taxes, except as otherwise provided in this section.

24 (2) Subsection (1) of this section does not apply with respect to:

25 (a) Taxes on real and tangible personal property;

26 (b) Excise taxes on the sale, purchase, use, or possession of (i)
27 real property; (ii) tangible personal property; (iii) extended
28 warranties; (iv) services, including digital automated services as
29 defined in RCW 82.04.192; and (v) digital goods and digital codes as
30 those terms are defined in RCW 82.04.192; and

31 (c) The tax imposed in RCW 82.04.260(~~(+10)~~) (9), regarding public
32 and nonprofit hospitals.

33 (3) For the purposes of this section, the term "taxes" includes
34 taxes imposed by the state or any county, city, town, municipal

1 corporation, quasi-municipal corporation, or other political
2 subdivision.

3 **PART VII**

4 **Eliminating Tax Preferences for Bullion**

5 NEW SECTION. **Sec. 701.** RCW 82.04.062 ("Sale at wholesale," "sale
6 at retail" excludes sale of precious metal bullion and monetized
7 bullion--Computation of tax) and 1985 c 471 s 5 are each repealed.

8 NEW SECTION. **Sec. 702.** The repeal in section 701 of this act does
9 not affect any existing right acquired or liability or obligation
10 incurred under the statute repealed or under any rule or order adopted
11 under that statute nor does it affect any proceeding instituted under
12 the repealed statute.

13 NEW SECTION. **Sec. 703.** A new section is added to chapter 82.08
14 RCW to read as follows:

15 (1) The tax levied by RCW 82.08.020 does not apply to the sale of
16 precious metal bullion or monetized bullion.

17 (2) The definitions in this subsection apply to this section.

18 (a) "Precious metal bullion" means any precious metal that has been
19 put through a process of smelting or refining, including, but not
20 limited to, gold, silver, platinum, rhodium, and palladium, and which
21 is in such state or condition that its value depends upon its contents
22 and not upon its form.

23 (b) "Monetized bullion" means coins or other forms of money
24 manufactured from gold, silver, or other metals and used as a medium of
25 exchange under the laws of this state, the United States, or any
26 foreign nation, but does not include coins or money sold to be
27 manufactured into jewelry or works of art.

28 NEW SECTION. **Sec. 704.** A new section is added to chapter 82.12
29 RCW to read as follows:

30 (1) The provisions of this chapter do not apply with respect to the
31 use of precious metal bullion or monetized bullion.

32 (2) The definitions in section 703 of this act apply to this
33 section.

1 **PART VIII**

2 **Repealing the Sales and Use Tax Exemption for Livestock Nutrient**
3 **Equipment and Facilities**

4 NEW SECTION. **Sec. 801.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 82.08.890 (Exemptions--Qualifying livestock nutrient
7 management equipment and facilities) and 2009 c 469 s 601, 2006 c 151
8 s 2, & 2001 2nd sp.s. c 18 s 2; and

9 (2) RCW 82.12.890 (Exemptions--Livestock nutrient management
10 equipment and facilities) and 2009 c 469 s 602, 2006 c 151 s 3, 2003 c
11 5 s 15, & 2001 2nd sp.s. c 18 s 3.

12 **PART IX**

13 **Ending the Preferential Business and Occupation Tax Treatment Received**
14 **by Directors of Corporations**

15 NEW SECTION. **Sec. 901.** (1) In adopting the state's business and
16 occupation tax, the legislature intended to tax virtually all business
17 activities carried on within the state. See *Simpson Inv. Co. v. Dep't*
18 *of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that
19 the business and occupation tax applies to all activities engaged in
20 with the object of gain, benefit, or advantage to the taxpayer or to
21 another person or class, directly or indirectly, unless a specific
22 exemption applies.

23 (2) One of the major business and occupation tax exemptions is
24 provided in RCW 82.04.360 for income earned as an employee or servant
25 as distinguished from income earned as an independent contractor. The
26 legislature's intent in providing this exemption was to exempt employee
27 wages from the business and occupation tax but not to exempt income
28 earned as an independent contractor.

29 (3) The legislature finds that corporate directors are not
30 employees or servants of the corporation whose board they serve on and
31 therefore are not entitled to a business and occupation tax exemption
32 under RCW 82.04.360. The legislature further finds that there are no
33 business and occupation tax exemptions for compensation received for
34 serving as a member of a corporation's board of directors.

35 (4) The legislature also finds that there is a widespread
36 misunderstanding among corporate directors that the business and

1 occupation tax does not apply to the compensation they receive for
2 serving as a director of a corporation. It is the legislature's
3 expectation that the department of revenue will take appropriate
4 measures to ensure that corporate directors understand and comply with
5 their business and occupation tax obligations with respect to their
6 director compensation. However, because of the widespread
7 misunderstanding by corporate directors of their liability for business
8 and occupation tax on director compensation, the legislature finds that
9 it is appropriate in this unique situation to provide limited relief
10 against the retroactive assessment of business and occupation taxes on
11 corporate director compensation.

12 (5) The legislature also reaffirms its intent that all income of
13 all independent contractors is subject to business and occupation tax
14 unless specifically exempt under the Constitution or laws of this state
15 or the United States.

16 **Sec. 902.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
17 each reenacted and amended to read as follows:

18 (1) This chapter (~~shall~~) does not apply to any person in respect
19 to his or her employment in the capacity of an employee or servant as
20 distinguished from that of an independent contractor. For the purposes
21 of this section, the definition of employee shall include those persons
22 that are defined in section 3121(d)(3)(B) of the federal internal
23 revenue code of 1986, as amended through January 1, 1991.

24 (2) (~~(A booth renter, as defined by RCW 18.16.020, is an~~
25 ~~independent contractor for purposes of this chapter.)) Until July 1,
26 2010, this chapter does not apply to amounts received by an individual
27 from a corporation as compensation for serving as a member of that
28 corporation's board of directors. Beginning July 1, 2010, such amounts
29 are taxable under RCW 82.04.290(2).~~

30 NEW SECTION. **Sec. 903.** The sole reason for deleting the language
31 in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term
32 "booth renter." This should not be construed as a substantive change
33 in the law.

34 NEW SECTION. **Sec. 904.** In accordance with Article VIII, section
35 5 of the state Constitution, sections 902 and 1505 of this act do not

1 authorize refunds of business and occupation tax validly collected
2 before July 1, 2010, on amounts received by an individual from a
3 corporation as compensation for serving as a member of that
4 corporation's board of directors.

5 **PART X**

6 **Airplane Excise Tax**

7 **Sec. 1001.** RCW 82.48.010 and 1995 c 318 s 4 are each amended to
8 read as follows:

9 For the purposes of this chapter, unless otherwise required by the
10 context:

- 11 (1) "Department" means the department of transportation.
- 12 (2) "Aircraft" means any weight-carrying device or structure for
13 navigation of the air which is designed to be supported by the air;
- 14 ~~((+2))~~ (3) "Secretary" means the secretary of transportation;
- 15 ~~((+3))~~ (4) "Person" includes a firm, partnership, limited
16 liability company, or corporation~~((+)~~
- 17 ~~(4) "Small multi-engine fixed wing" means any piston-driven multi-~~
18 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
19 ~~manufacturer of less than seventy-five hundred pounds; and~~
- 20 ~~(5) "Large multi-engine fixed wing" means any piston-driven multi-~~
21 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~
22 ~~manufacturer of seventy-five hundred pounds or more)).~~

23 **Sec. 1002.** RCW 82.48.020 and 2000 c 229 s 4 are each amended to
24 read as follows:

25 (1) ~~((An annual excise tax is hereby imposed for the privilege of~~
26 ~~using any aircraft in the state. A current certificate of air~~
27 ~~worthiness with a current inspection date from the appropriate federal~~
28 ~~agency and/or the purchase of aviation fuel shall constitute the~~
29 ~~necessary evidence of aircraft use or intended use. The tax shall))~~ An
30 annual excise tax is imposed for the privilege of using any aircraft in
31 the state. The amount of the tax is five-tenths of one percent of the
32 taxable value of the aircraft, as determined under section 1003 of this
33 act.

34 (2) The tax imposed under this section must be collected annually
35 or under a staggered collection schedule as required by the secretary

1 by rule. (~~No additional tax shall be imposed under this chapter upon~~
2 ~~any aircraft upon the transfer of ownership thereof, if the tax imposed~~
3 ~~by this chapter with respect to such aircraft has already been paid for~~
4 ~~the year in which transfer of ownership occurs. A violation of this~~
5 ~~subsection is a misdemeanor punishable as provided under chapter 9A.20~~
6 ~~RCW.~~

7 ~~(2))~~ (3) Persons who are required to register aircraft under
8 chapter 47.68 RCW and who register aircraft in another state or foreign
9 country and avoid the (~~Washington~~) aircraft excise tax imposed under
10 this section are liable for (~~such~~) the unpaid excise tax. A
11 violation of this subsection is a gross misdemeanor.

12 (4) The department of revenue may, under chapter 82.32 RCW, assess
13 and collect the unpaid excise tax imposed under (~~chapter 82.32 RCW~~)
14 this section, including the penalties and interest provided in chapter
15 82.32 RCW.

16 (~~(3))~~ (5) Except as provided under subsection(~~s (1) and (2))~~)
17 (3) of this section, a violation of this chapter is a misdemeanor
18 punishable as provided in chapter 9A.20 RCW.

19 NEW SECTION. Sec. 1003. A new section is added to chapter 82.48
20 RCW to read as follows:

21 The department must prepare at least once each year a depreciation
22 schedule for use in the determination of fair market value for the
23 purposes of this chapter. The schedule must be based upon information
24 available to the department pertaining to the current fair market value
25 of aircraft. The fair market value of an aircraft for the purposes of
26 this chapter must be based on the most recent purchase price
27 depreciated according to the year of the most recent purchase of the
28 aircraft. The most recent purchase price is the consideration, whether
29 money, credit, rights, or other property expressed in terms of money,
30 paid or given or contracted to be paid or given by the purchaser to the
31 seller for the aircraft.

32 Sec. 1004. RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each
33 amended to read as follows:

34 (1) (~~The amount of the tax imposed by this chapter for each~~
35 ~~calendar year shall be as follows:~~

	Type of aircraft	Registration fee
1		
2	Single engine fixed wing	\$ 50
3	Small multi-engine fixed wing	65
4	Large multi-engine fixed wing	80
5	Turboprop multi-engine fixed wing	100
6	Turbojet multi-engine fixed wing	125
7	Helicopter	75
8	Sailplane	20
9	Lighter than air	20
10	Home built	20

11 ~~(2)~~) The amount of tax imposed under ~~((subsection (1) of this~~
12 ~~section))~~ RCW 82.48.020 for each calendar year ~~((shall))~~ must be
13 divided into twelve parts corresponding to the months of the calendar
14 year, and the excise tax upon an aircraft registered for the first time
15 in this state after the last day of any month ~~((shall))~~ is only ~~((be))~~
16 levied for the remaining months of the calendar year including the
17 month in which the aircraft is being registered~~((:—PROVIDED, That))~~.
18 However, the minimum amount payable ~~((shall be))~~ is three dollars.

19 (2) For the purposes of this chapter, an aircraft ~~((shall be))~~ is
20 deemed registered for the first time in this state when such aircraft
21 was not ~~((previously))~~ required to be registered by this state for the
22 year immediately preceding the year in which application for
23 registration is made and was not so registered.

24 **Sec. 1005.** RCW 82.48.070 and 1987 c 220 s 7 are each amended to
25 read as follows:

26 The secretary ~~((shall))~~ must give a receipt to each person paying
27 ~~((the))~~ excise tax under this chapter.

28 **Sec. 1006.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to
29 read as follows:

30 The secretary ~~((shall))~~ must regularly pay to the state treasurer
31 the excise taxes collected under this chapter~~((, which shall be~~
32 ~~credited by the state treasurer as follows: Ninety percent to the~~
33 ~~general fund and ten percent to the aeronautics account in the~~

1 ~~transportation fund for administrative expenses))~~ for deposit into the
2 general fund.

3 **Sec. 1007.** RCW 82.48.110 and 1967 ex.s. c 9 s 6 are each amended
4 to read as follows:

5 ~~((The first tax to be collected under this chapter shall be for the~~
6 ~~calendar year 1968.))~~ (1) No aircraft with respect to which the excise
7 tax imposed by this chapter is payable ~~((shall))~~ may be listed and
8 assessed for ad valorem taxation so long as this chapter remains in
9 effect~~((, and any such assessment heretofore made except under~~
10 ~~authority of section 13, chapter 49, Laws of 1949 and section~~
11 ~~82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled:~~
12 ~~PROVIDED, That)).~~

13 (2) Any aircraft, whether or not subject to the provisions of this
14 chapter, with respect to which the excise tax imposed by this chapter
15 will not be paid or has not been paid for any year ~~((shall))~~ must be
16 listed and assessed for ad valorem taxation in that year, and the ad
17 valorem tax liability resulting from such listing and assessment
18 ~~((shall))~~ must be collected in the same manner as though this chapter
19 had not been passed~~((: PROVIDED FURTHER, That this chapter shall not~~
20 ~~be construed to affect any ad valorem tax based upon assessed~~
21 ~~valuations made in 1948 and/or any preceding year for taxes payable in~~
22 ~~1949 or any preceding year, which ad valorem tax liability tax for any~~
23 ~~such years shall remain payable and collectible in the same manner as~~
24 ~~though this chapter had not been passed)).~~

25 **PART XI**

26 **Public Utility Tax on Interstate Hauls**

27 NEW SECTION. **Sec. 1101.** (1) The legislature finds that at the
28 time the revenue act of 1935 was enacted, the United States supreme
29 court interpreted the commerce clause of the United States Constitution
30 as barring a direct tax on gross receipts from interstate
31 transportation. As a result, the tax commission's rules to implement
32 the revenue act recognized explicitly that the state could not tax the
33 income derived from the transportation of goods across the state's
34 boundaries. The legislature finds that the department of revenue, as

1 successor to the tax commission, has maintained this exemption to this
2 day in a department rule, WAC 458-20-193D.

3 (2) The legislature recognizes that the commerce clause no longer
4 bars states from taxing the privilege of engaging in an interstate
5 business. The legislature further recognizes that under the United
6 States supreme court's current commerce clause jurisprudence, a state
7 tax affecting interstate commerce will be sustained as long as it is
8 applied to an activity with a substantial nexus with the taxing state,
9 is fairly apportioned, does not discriminate against interstate
10 commerce, and is fairly related to services provided by the state. See
11 *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

12 (3) The legislature finds that the department of revenue has
13 maintained the tax-exempt treatment of interstate transportation for
14 appropriate reasons, including:

15 (a) The litigation risk in administratively eliminating the tax
16 exemption for interstate transportation;

17 (b) The lack of any statutory provisions for apportioning the
18 income of interstate transportation businesses. A legislative
19 determination to end the exemption has the benefit of allowing the
20 legislature to prescribe a specific methodology for apportioning the
21 income of interstate transportation businesses; and

22 (c) Because the transportation of persons or property across the
23 state's boundaries has been treated as exempt from the state's public
24 utility tax for nearly seventy-five years, the expectation of continued
25 exemption has been established over the years in the transportation
26 industry. Therefore, the legislature believes that, as the elected
27 representatives of the people, it is appropriate under these unique
28 circumstances for the legislature to have an opportunity to determine
29 the state's tax policy in regards to the public utility taxation of
30 interstate transportation before the department of revenue takes action
31 on its own.

32 (4) Therefore, by this act, the legislature intends to establish a
33 policy of taxing interstate transportation on an apportioned basis
34 effective July 1, 2010. However, to prevent the retroactive assessment
35 of public utility tax on interstate transportation on an apportioned
36 basis for periods prior to July 1, 2010, this act provides a statutory
37 deduction for income received from interstate transportation for

1 periods before July 1, 2010. This act also revises a use tax exemption
2 for motor carriers so that it is consistent with similar exemptions
3 provided to other interstate transportation businesses.

4 (5) Nothing in this act may be construed as requiring the
5 department of revenue to receive approval from the legislature before
6 changing a long-standing interpretation of the tax laws it administers.

7 **Sec. 1102.** RCW 82.16.050 and 2007 c 330 s 1 are each amended to
8 read as follows:

9 In computing tax there may be deducted from the gross income the
10 following items:

11 (1) Amounts derived by municipally owned or operated public service
12 businesses, directly from taxes levied for the support or maintenance
13 thereof. This subsection may not be construed to exempt service
14 charges which are spread on the property tax rolls and collected as
15 taxes;

16 (2) Amounts derived from the sale of commodities to persons in the
17 same public service business as the seller, for resale as such within
18 this state. This deduction is allowed only with respect to water
19 distribution, gas distribution or other public service businesses which
20 furnish water, gas or any other commodity in the performance of public
21 service businesses;

22 (3) Amounts actually paid by a taxpayer to another person taxable
23 under this chapter as the latter's portion of the consideration due for
24 services furnished jointly by both, if the total amount has been
25 credited to and appears in the gross income reported for tax by the
26 former;

27 (4) The amount of cash discount actually taken by the purchaser or
28 customer;

29 (5) The amount of bad debts, as that term is used in 26 U.S.C. Sec.
30 166 of the federal internal revenue code, as amended (~~(or renumbered)~~)
31 as of January 1, 2003, on which tax was previously paid under this
32 chapter;

33 (6) Amounts derived from business which the state is prohibited
34 from taxing under the Constitution of this state or the Constitution or
35 laws of the United States;

36 (7) Amounts derived from the distribution of water through an
37 irrigation system, for irrigation purposes;

1 (8) Until July 1, 2010, amounts derived from the transportation of
2 commodities from points of origin in this state to final destination
3 outside this state, or from points of origin outside this state to
4 final destination in this state, with respect to which the carrier
5 grants to the shipper the privilege of stopping the shipment in transit
6 at some point in this state for the purpose of storing, manufacturing,
7 milling, or other processing, and thereafter forwards the same
8 commodity, or its equivalent, in the same or converted form, under a
9 through freight rate from point of origin to final destination;

10 (9) Amounts derived from the transportation of commodities from
11 points of origin in the state to an export elevator, wharf, dock or
12 ship side on tidewater or its navigable tributaries to be forwarded,
13 without intervening transportation, by vessel, in their original form,
14 to interstate or foreign destinations. No deduction is allowed under
15 this subsection when the point of origin and the point of delivery to
16 the export elevator, wharf, dock, or ship side are located within the
17 corporate limits of the same city or town;

18 (10) Amounts derived from the transportation of agricultural
19 commodities, not including manufactured substances or articles, from
20 points of origin in the state to interim storage facilities in this
21 state for transshipment, without intervening transportation, to an
22 export elevator, wharf, dock, or ship side on tidewater or its
23 navigable tributaries to be forwarded, without intervening
24 transportation, by vessel, in their original form, to interstate or
25 foreign destinations. If agricultural commodities are transshipped
26 from interim storage facilities in this state to storage facilities at
27 a port on tidewater or its navigable tributaries, the same agricultural
28 commodity dealer must operate both the interim storage facilities and
29 the storage facilities at the port.

30 (a) The deduction under this subsection is available only when the
31 person claiming the deduction obtains a certificate from the
32 agricultural commodity dealer operating the interim storage facilities,
33 in a form and manner prescribed by the department, certifying that:

34 (i) More than ninety-six percent of all of the type of agricultural
35 commodity delivered by the person claiming the deduction under this
36 subsection and delivered by all other persons to the dealer's interim
37 storage facilities during the preceding calendar year was shipped by
38 vessel in original form to interstate or foreign destinations; and

1 (ii) Any of the agricultural commodity that is transshipped to
2 ports on tidewater or its navigable tributaries will be received at
3 storage facilities operated by the same agricultural commodity dealer
4 and will be shipped from such facilities, without intervening
5 transportation, by vessel, in their original form, to interstate or
6 foreign destinations.

7 (b) As used in this subsection, "agricultural commodity" has the
8 same meaning as agricultural product in RCW 82.04.213;

9 (11) Amounts derived from the production, sale, or transfer of
10 electrical energy for resale within or outside the state or for
11 consumption outside the state;

12 (12) Amounts derived from the distribution of water by a nonprofit
13 water association and used for capital improvements by that nonprofit
14 water association;

15 (13) Amounts paid by a sewerage collection business taxable under
16 RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the
17 treatment or disposal of sewage;

18 (14) Amounts derived from fees or charges imposed on persons for
19 transit services provided by a public transportation agency. For the
20 purposes of this subsection, "public transportation agency" means a
21 municipality, as defined in RCW 35.58.272, and urban public
22 transportation systems, as defined in RCW 47.04.082. Public
23 transportation agencies (~~shall~~) must spend an amount equal to the
24 reduction in tax provided by this tax deduction solely to adjust routes
25 to improve access for citizens using food banks and senior citizen
26 services or to extend or add new routes to assist low-income citizens
27 and seniors;

28 (15) Until July 1, 2010, amounts received from interstate
29 transportation. For purposes of this subsection, "interstate
30 transportation" means transporting persons or property between states
31 or between a state and a foreign country. "State" means a state of the
32 United States, the District of Columbia, the Commonwealth of Puerto
33 Rico, and any territory or possession of the United States.

34 NEW SECTION. Sec. 1103. A new section is added to chapter 82.16
35 RCW to read as follows:

36 (1) Persons taxable both within and without this state on the

1 business of transporting persons or property for hire must apportion to
2 this state that portion of gross income as provided in this section.

3 (2)(a) Except as otherwise provided in this section, gross income
4 must be apportioned to this state based on the ratio that revenue miles
5 of the person in this state during the tax period bear to the revenue
6 miles of the person everywhere during the tax period.

7 (b)(i) If both property and passengers are transported, a person
8 must determine the portion of gross income apportioned to this state by
9 first computing separate percentages as provided in (a) of this
10 subsection for property transported and for passengers transported.

11 (ii) Then separately divide gross income for each activity by the
12 total gross income from transporting persons and property for hire.

13 (iii) Then multiply the percentage for property transported as
14 determined under (a) of this subsection by the percentage of gross
15 income from transporting property as determined under (b)(ii) of this
16 subsection, and multiply the percentage for persons transported as
17 determined under (a) of this subsection by the percentage of gross
18 income from transporting persons as determined under (b)(ii) of this
19 subsection.

20 (iv) Then sum the results of both calculations in (b)(iii) of this
21 subsection and use this percentage to determine the portion of gross
22 income apportioned to this state from transporting persons and property
23 for hire.

24 (3) For persons that transport gas, oil, petroleum products, or
25 other products by pipeline, gross income must be apportioned to this
26 state based on the ratio that the total number of traffic units in this
27 state during the tax period bear to the total number of traffic units
28 everywhere during the tax period.

29 (4) For purposes of this section, the following definitions apply:

30 (a) "Revenue mile" means the transportation of one net ton of
31 property or one passenger, for the distance of one mile.

32 (b)(i) "Traffic unit" means the movement of one unit of product for
33 a distance of one mile.

34 (ii) For purposes of this subsection (4)(b), "one unit" means one
35 barrel consisting of forty-two United States gallons, except that for
36 natural gas and manufactured gas, "one unit" means one thousand cubic
37 feet of gas.

1 **Sec. 1104.** RCW 82.12.0254 and 2009 c 503 s 2 are each amended to
2 read as follows:

3 (1) The provisions of this chapter do not apply in respect to the
4 use of:

5 (a) Any airplane used primarily in (i) conducting interstate or
6 foreign commerce or (ii) providing intrastate air transportation by a
7 commuter air carrier as defined in RCW 82.08.0262;

8 (b) Any locomotive, railroad car, or watercraft used primarily in
9 conducting interstate or foreign commerce by transporting therein or
10 therewith property and persons for hire or used primarily in commercial
11 deep sea fishing operations outside the territorial waters of the
12 state;

13 (c) Tangible personal property that becomes a component part of any
14 such airplane, locomotive, railroad car, or watercraft in the course of
15 repairing, cleaning, altering, or improving the same; and

16 (d) Labor and services rendered in respect to such repairing,
17 cleaning, altering, or improving.

18 (2) The provisions of this chapter do not apply in respect to the
19 use by a nonresident of this state of any motor vehicle or trailer used
20 exclusively in transporting persons or property across the boundaries
21 of this state and in intrastate operations incidental thereto when such
22 motor vehicle or trailer is registered and licensed in a foreign state
23 and in respect to the use by a nonresident of this state of any motor
24 vehicle or trailer so registered and licensed and used within this
25 state for a period not exceeding fifteen consecutive days under such
26 rules as the department must adopt. However, under circumstances
27 determined to be justifiable by the department a second fifteen day
28 period may be authorized consecutive with the first fifteen day period;
29 and for the purposes of this exemption the term "nonresident" as used
30 herein includes a user who has one or more places of business in this
31 state as well as in one or more other states, but the exemption for
32 nonresidents applies only to those vehicles which are most frequently
33 dispatched, garaged, serviced, maintained, and operated from the user's
34 place of business in another state.

35 (3) The provisions of this chapter do not apply in respect to the
36 use of:

37 (a) Any motor vehicle or trailer, whether owned by the holder of a
38 carrier permit issued by the interstate commerce commission or its

1 successor agency (~~of any motor vehicle or trailer whether owned by~~)
2 or leased with or without driver to the permit holder and used (~~in~~
3 ~~substantial part~~) in the normal and ordinary course of the user's
4 business primarily for transporting therein persons or property for
5 hire across the boundaries of this state; (~~and in respect to the use~~
6 ~~of~~)

7 (b) Any motor vehicle or trailer while being operated under the
8 authority of a one-transit permit issued by the director of licensing
9 pursuant to RCW 46.16.160 and moving upon the highways from the point
10 of delivery in this state to a point outside this state; (~~and in~~
11 ~~respect to the use of~~)

12 (c) Tangible personal property (~~which~~) that becomes a component
13 part of any motor vehicle or trailer (~~used by the holder of a carrier~~
14 ~~permit issued by the interstate commerce commission or its successor~~
15 ~~agency authorizing transportation by motor vehicle across the~~
16 ~~boundaries of this state whether such motor vehicle or trailer is owned~~
17 ~~by or leased with or without driver to the permit holder~~) that is
18 exempt under (a) of this subsection, in the course of repairing,
19 cleaning, altering, or improving the same; (~~also the use of~~) and

20 (d) Labor and services rendered in respect to such repairing,
21 cleaning, altering, or improving any motor vehicle or trailer that is
22 exempt under (a) of this subsection.

23 **PART XII**
24 **Foreclosure Exemption**

25 **Sec. 1201.** RCW 82.45.010 and 2010 c ... s 207 (section 207 of this
26 act) are each amended to read as follows:

27 (1) As used in this chapter, the term "sale" has its ordinary
28 meaning and includes any conveyance, grant, assignment, quitclaim, or
29 transfer of the ownership of or title to real property, including
30 standing timber, or any estate or interest therein for a valuable
31 consideration, and any contract for such conveyance, grant, assignment,
32 quitclaim, or transfer, and any lease with an option to purchase real
33 property, including standing timber, or any estate or interest therein
34 or other contract under which possession of the property is given to
35 the purchaser, or any other person at the purchaser's direction, and
36 title to the property is retained by the vendor as security for the

1 payment of the purchase price. The term also includes the grant,
2 assignment, quitclaim, sale, or transfer of improvements constructed
3 upon leased land.

4 (2)(a) The term "sale" also includes the transfer or acquisition
5 within any twelve-month period of a controlling interest in any entity
6 with an interest in real property located in this state for a valuable
7 consideration.

8 (b) For the sole purpose of determining whether, pursuant to the
9 exercise of an option, a controlling interest was transferred or
10 acquired within a twelve-month period, the date that the option
11 agreement was executed is the date on which the transfer or acquisition
12 of the controlling interest is deemed to occur. For all other purposes
13 under this chapter, the date upon which the option is exercised is the
14 date of the transfer or acquisition of the controlling interest.

15 (c) For purposes of this subsection, all acquisitions of persons
16 acting in concert must be aggregated for purposes of determining
17 whether a transfer or acquisition of a controlling interest has taken
18 place. The department must adopt standards by rule to determine when
19 persons are acting in concert. In adopting a rule for this purpose,
20 the department must consider the following:

21 (i) Persons must be treated as acting in concert when they have a
22 relationship with each other such that one person influences or
23 controls the actions of another through common ownership; and

24 (ii) When persons are not commonly owned or controlled, they must
25 be treated as acting in concert only when the unity with which the
26 purchasers have negotiated and will consummate the transfer of
27 ownership interests supports a finding that they are acting as a single
28 entity. If the acquisitions are completely independent, with each
29 purchaser buying without regard to the identity of the other
30 purchasers, then the acquisitions are considered separate acquisitions.

31 (3) The term "sale" does not include:

32 (a) A transfer by gift, devise, or inheritance.

33 (b) A transfer of any leasehold interest other than of the type
34 mentioned above.

35 (c) A cancellation or forfeiture of a vendee's interest in a
36 contract for the sale of real property, whether or not such contract
37 contains a forfeiture clause, or deed in lieu of foreclosure of a
38 mortgage.

1 (d) The partition of property by tenants in common by agreement or
2 as the result of a court decree.

3 (e) The assignment of property or interest in property from one
4 spouse or one domestic partner to the other spouse or other domestic
5 partner in accordance with the terms of a decree of dissolution of
6 marriage or state registered domestic partnership or in fulfillment of
7 a property settlement agreement.

8 (f) The assignment or other transfer of a vendor's interest in a
9 contract for the sale of real property, even though accompanied by a
10 conveyance of the vendor's interest in the real property involved.

11 (g) Transfers by appropriation or decree in condemnation
12 proceedings brought by the United States, the state or any political
13 subdivision thereof, or a municipal corporation.

14 (h) A mortgage or other transfer of an interest in real property
15 merely to secure a debt, or the assignment thereof.

16 (i) ~~((Any))~~ A transfer or conveyance made (i) to the beneficiary of
17 a deed of trust pursuant to a trustee's sale in the nonjudicial
18 foreclosure of a deed of trust ((or)); (ii) to the mortgagee,
19 beneficiary of the deed of trust, or lienholder pursuant to an order of
20 sale by the court in the judicial foreclosure of any mortgage, deed of
21 trust, or lien ((foreclosure proceeding or upon execution of a
22 judgment, or)); (iii) to the mortgagee by the mortgagor or to the
23 beneficiary of a deed of trust by the grantor pursuant to deed in lieu
24 of foreclosure to satisfy a mortgage or deed of trust; or (iv) to the
25 judgment creditor pursuant to a writ of execution to enforce a
26 judgment.

27 (j) A conveyance to the federal housing administration or veterans
28 administration by an authorized mortgagee made pursuant to a contract
29 of insurance or guaranty with the federal housing administration or
30 veterans administration.

31 (k) A transfer in compliance with the terms of any lease or
32 contract upon which the tax as imposed by this chapter has been paid or
33 where the lease or contract was entered into prior to the date this tax
34 was first imposed.

35 (l) The sale of any grave or lot in an established cemetery.

36 (m) A sale by the United States, this state or any political
37 subdivision thereof, or a municipal corporation of this state.

1 (n) A sale to a regional transit authority or public corporation
2 under RCW 81.112.320 under a sale/leaseback agreement under RCW
3 81.112.300.

4 (o) A transfer of real property, however effected, if it consists
5 of a mere change in identity or form of ownership of an entity where
6 there is no change in the beneficial ownership. These include
7 transfers to a corporation or partnership which is wholly owned by the
8 transferor and/or the transferor's spouse or domestic partner or
9 children of the transferor or the transferor's spouse or domestic
10 partner. However, if thereafter such transferee corporation or
11 partnership voluntarily transfers such real property, or such
12 transferor, spouse or domestic partner, or children of the transferor
13 or the transferor's spouse or domestic partner voluntarily transfer
14 stock in the transferee corporation or interest in the transferee
15 partnership capital, as the case may be, to other than (i) the
16 transferor and/or the transferor's spouse or domestic partner or
17 children of the transferor or the transferor's spouse or domestic
18 partner, (ii) a trust having the transferor and/or the transferor's
19 spouse or domestic partner or children of the transferor or the
20 transferor's spouse or domestic partner as the only beneficiaries at
21 the time of the transfer to the trust, or (iii) a corporation or
22 partnership wholly owned by the original transferor and/or the
23 transferor's spouse or domestic partner or children of the transferor
24 or the transferor's spouse or domestic partner, within three years of
25 the original transfer to which this exemption applies, and the tax on
26 the subsequent transfer has not been paid within sixty days of becoming
27 due, excise taxes become due and payable on the original transfer as
28 otherwise provided by law.

29 (p)(i) A transfer that for federal income tax purposes does not
30 involve the recognition of gain or loss for entity formation,
31 liquidation or dissolution, and reorganization, including but not
32 limited to nonrecognition of gain or loss because of application of 26
33 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
34 revenue code of 1986, as amended.

35 (ii) However, the transfer described in (p)(i) of this subsection
36 cannot be preceded or followed within a twelve-month period by another
37 transfer or series of transfers, that, when combined with the otherwise
38 exempt transfer or transfers described in (p)(i) of this subsection,

1 results in the transfer of a controlling interest in the entity for
2 valuable consideration, and in which one or more persons previously
3 holding a controlling interest in the entity receive cash or property
4 in exchange for any interest the person or persons acting in concert
5 hold in the entity. This subsection (3)(p)(ii) does not apply to that
6 part of the transfer involving property received that is the real
7 property interest that the person or persons originally contributed to
8 the entity or when one or more persons who did not contribute real
9 property or belong to the entity at a time when real property was
10 purchased receive cash or personal property in exchange for that person
11 or persons' interest in the entity. The real estate excise tax under
12 this subsection (3)(p)(ii) is imposed upon the person or persons who
13 previously held a controlling interest in the entity.

14 (q) A qualified sale of a manufactured/mobile home community, as
15 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
16 but before December 31, 2018.

17 **Sec. 1202.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
18 read as follows:

19 (1) The tax levied under this chapter ((shall be)) is the
20 obligation of the seller and the department ((of revenue)) may, at the
21 department's option, enforce the obligation through an action of debt
22 against the seller or the department may proceed in the manner
23 prescribed for the foreclosure of mortgages ((and resort to)). The
24 department's use of one course of enforcement ((shall)) is not ((be))
25 an election not to pursue the other.

26 (2) For purposes of this section and notwithstanding any other
27 provisions of law, in a sale involving a judicial or nonjudicial
28 foreclosure or enforcement of a judgment, the seller is the:

29 (a) Beneficiary of a deed of trust in any transfer or conveyance to
30 any party other than such beneficiary pursuant to a trustee's sale in
31 the nonjudicial foreclosure of the deed of trust;

32 (b) Mortgagee, beneficiary of a deed of trust, or lienholder in any
33 transfer or conveyance to any party other than such mortgagee,
34 beneficiary, or lienholder pursuant to an order of sale by the court in
35 the judicial foreclosure of any mortgage, deed of trust, or lien; and

36 (c) Judgment creditor in any transfer or conveyance to any party

1 other than such creditor pursuant to a writ of execution to enforce a
2 judgment.

3 **PART XIII**
4 **Tax Debts**

5 **Sec. 1301.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
6 read as follows:

7 ~~(1) ((Upon termination, dissolution, or abandonment of a corporate~~
8 ~~or limited liability company business, any officer, member, manager, or~~
9 ~~other person having control or supervision of retail sales tax funds~~
10 ~~collected and held in trust under RCW 82.08.050, or who is charged with~~
11 ~~the responsibility for the filing of returns or the payment of retail~~
12 ~~sales tax funds collected and held in trust under RCW 82.08.050, shall~~
13 ~~be personally liable for any unpaid taxes and interest and penalties on~~
14 ~~those taxes, if such officer or other person wilfully fails to pay or~~
15 ~~to cause to be paid any taxes due from the corporation pursuant to~~
16 ~~chapter 82.08 RCW. For the purposes of this section, any retail sales~~
17 ~~taxes that have been paid but not collected shall be deductible from~~
18 ~~the retail sales taxes collected but not paid.~~

19 ~~For purposes of this subsection "wilfully fails to pay or to cause~~
20 ~~to be paid" means that the failure was the result of an intentional,~~
21 ~~conscious, and voluntary course of action.~~

22 ~~(2) The officer, member or manager, or other person shall be liable~~
23 ~~only for taxes collected which)) Whenever the department has issued a~~
24 ~~warrant under RCW 82.32.210 for the collection of unpaid taxes from a~~
25 ~~limited liability business entity and that business entity has been~~
26 ~~terminated, dissolved, or abandoned, or is insolvent, the department~~
27 ~~may pursue collection of the entity's unpaid taxes, including penalties~~
28 ~~and interest on those taxes, against any or all of the responsible~~
29 ~~individuals. For purposes of this subsection, "insolvent" means the~~
30 ~~condition that results when the sum of the entity's debts exceeds the~~
31 ~~fair market value of its assets. The department may presume that an~~
32 ~~entity is insolvent if the entity refuses to disclose to the department~~
33 ~~the nature of its assets and liabilities.~~

34 (2) Personal liability under this section may be imposed for state
35 and local sales and use taxes, state business and occupation taxes, and

1 any other state and local taxes collected by the department in respect
2 to which the provisions of this chapter apply, regardless of whether
3 the tax is denominated a tax, fee, charge, or some other term.

4 (3)(a) For a responsible individual who is the current or a former
5 chief executive or chief financial officer, liability under this
6 section applies regardless of fault or whether the individual was or
7 should have been aware of the unpaid tax liability of the limited
8 liability business entity.

9 (b) For any other responsible individual, liability under this
10 section applies only if he or she willfully fails to pay or to cause to
11 be paid to the department the taxes due from the limited liability
12 business entity.

13 (4)(a) Except as provided in this subsection (4)(a), a responsible
14 individual who is the current or a former chief executive or chief
15 financial officer is liable under this section only for tax liability
16 accrued during the period that he or she was the chief executive or
17 chief financial officer. However, if the responsible individual had
18 the responsibility or duty to remit payment of the limited liability
19 business entity's taxes to the department during any period of time
20 that the person was not the chief executive or chief financial officer,
21 that individual is also liable for tax liability that became due during
22 the period that he or she had the duty to remit payment of the limited
23 liability business entity's taxes to the department but was not the
24 chief executive or chief financial officer.

25 (b) All other responsible individuals are liable under this section
26 only for tax liability that became due during the period he or she had
27 the (~~control, supervision,~~) responsibility(~~)~~ or duty to (~~act for~~
28 the corporation described in subsection (1) of this section, plus
29 interest and penalties on those taxes.

30 ~~(3))~~ remit payment of the limited liability business entity's
31 taxes to the department.

32 (5) Persons (~~liable under~~) described in subsection (~~(1)~~) (3)(b)
33 of this section are exempt from liability under this section in
34 situations where nonpayment of the (~~retail sales tax funds held in~~
35 trust)) limited liability business entity's taxes is due to reasons
36 beyond their control as determined by the department by rule.

37 ~~(4)~~ (6) Any person having been issued a notice of assessment

1 under this section is entitled to the appeal procedures under RCW
2 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

3 ~~((5) This section applies only in situations where the department
4 has determined that there is no reasonable means of collecting the
5 retail sales tax funds held in trust directly from the corporation.~~

6 ~~(6))~~ (7) This section does not relieve the ~~((corporation or))~~
7 limited liability ~~((company))~~ business entity of ~~((other tax
8 liabilities))~~ its tax liability or otherwise impair other tax
9 collection remedies afforded by law.

10 ~~((7))~~ (8) Collection authority and procedures prescribed in this
11 chapter apply to collections under this section.

12 (9) The definitions in this subsection apply throughout this
13 section unless the context clearly requires otherwise.

14 (a) "Chief executive" means: The president of a corporation; or
15 for other entities or organizations other than corporations or if the
16 corporation does not have a president as one of its officers, the
17 highest ranking executive manager or administrator in charge of the
18 management of the company or organization.

19 (b) "Chief financial officer" means: The treasurer of a
20 corporation; or for entities or organizations other than corporations
21 or if a corporation does not have a treasurer as one of its officers,
22 the highest senior manager who is responsible for overseeing the
23 financial activities of the entire company or organization.

24 (c) "Limited liability business entity" means a type of business
25 entity that generally shields its owners from personal liability for
26 the debts, obligations, and liabilities of the entity, or a business
27 entity that is managed or owned in whole or in part by an entity that
28 generally shields its owners from personal liability for the debts,
29 obligations, and liabilities of the entity. Limited liability business
30 entities include corporations, limited liability companies, limited
31 liability partnerships, trusts, general partnerships and joint ventures
32 in which one or more of the partners or parties are also limited
33 liability business entities, and limited partnerships in which one or
34 more of the general partners are also limited liability business
35 entities.

36 (d) "Manager" has the same meaning as in RCW 25.15.005.

37 (e) "Member" has the same meaning as in RCW 25.15.005, except that

1 the term only includes members of member-managed limited liability
2 companies.

3 (f) "Officer" means any officer or assistant officer of a
4 corporation, including the president, vice-president, secretary, and
5 treasurer.

6 (g)(i) "Responsible individual" includes any current or former
7 officer, manager, member, partner, or trustee of a limited liability
8 business entity with an unpaid tax warrant issued by the department.

9 (ii) "Responsible individual" also includes any current or former
10 employee or other individual, but only if the individual had the
11 responsibility or duty to remit payment of the limited liability
12 business entity's unpaid tax liability reflected in a tax warrant
13 issued by the department.

14 (iii) Whenever any taxpayer has one or more limited liability
15 business entities as a member, manager, or partner, "responsible
16 individual" also includes any current and former officers, members, or
17 managers of the limited liability business entity or entities or of any
18 other limited liability business entity involved directly in the
19 management of the taxpayer. For purposes of this subsection
20 (9)(g)(iii), "taxpayer" means a limited liability business entity with
21 an unpaid tax warrant issued against it by the department.

22 (h) "Willfully fails to pay or to cause to be paid" means that the
23 failure was the result of an intentional, conscious, and voluntary
24 course of action.

25 **PART XIV**

26 **Repealing the Business and Occupation Tax Credit for New Employment for**
27 **International Service Activities**

28 NEW SECTION. Sec. 1401. RCW 82.04.44525 (Credit--New employment
29 for international service activities in eligible areas--Designation of
30 census tracts for eligibility--Records--Tax due upon ineligibility--
31 Interest assessment--Information from employment security department)
32 and 2009 c 535 s 1104, 2008 c 81 s 9, & 1998 c 313 s 2 are each
33 repealed.

34 **PART XV**

1 **MISCELLANEOUS PROVISIONS**

2 NEW SECTION. **Sec. 1501.** (1) Except as provided in subsection (2)
3 of this section, if any provision of sections 101 through 108 of this
4 act or its application to any person or circumstance is held invalid,
5 the remainder of sections 101 through 108 of this act or the
6 application of the provision to other persons or circumstances is not
7 affected.

8 (2) If a court of competent jurisdiction, in a final judgment not
9 subject to appeal, adjudges any provision of section 104(1)(c) of this
10 act unconstitutional or otherwise invalid, sections 101 through 108 of
11 this act are null and void in their entirety.

12 NEW SECTION. **Sec. 1502.** Sections 101 through 108 of this act
13 apply with respect to gross income of the business, as defined in RCW
14 82.04.080, including gross income from royalties as defined in RCW
15 82.04.2907, generated on and after July 1, 2010. For purposes of
16 calculating the thresholds in section 104(1)(c) of this act for the
17 2010 tax year, property, payroll, and receipts are based on the entire
18 2010 tax year.

19 NEW SECTION. **Sec. 1503.** Sections 201 through 213 of this act must
20 be construed liberally to effectuate the legislature's intent to ensure
21 that all businesses and individuals pay their fair share of taxes.

22 NEW SECTION. **Sec. 1504.** (1) Except as provided in subsection (2)
23 of this section, section 201 of this act applies to tax periods
24 beginning January 1, 2006.

25 (2) Section 201 of this act does not apply to any tax periods
26 ending before July 1, 2010, that were included in a completed field
27 audit conducted by the department.

28 NEW SECTION. **Sec. 1505.** Sections 502, 902, and 1102 of this act
29 apply both retroactively and prospectively.

30 NEW SECTION. **Sec. 1506.** Section 502 of this act does not affect
31 any final judgments, not subject to appeal, entered by a court of
32 competent jurisdiction before the effective date of this section.

1 NEW SECTION. **Sec. 1507.** Sections 1201 and 1202 of this act apply
2 to transfers or conveyances as described in RCW 82.45.010(3)(i)
3 occurring on and after April 1, 2010.

4 NEW SECTION. **Sec. 1508.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 1509.** Sections 501, 502, and 1505 of this act
9 are necessary for the immediate preservation of the public peace,
10 health, or safety, or support of the state government and its existing
11 public institutions, and take effect immediately.

12 NEW SECTION. **Sec. 1510.** Except for sections 501, 502, 606, and
13 1505 of this act, this act is necessary for the immediate preservation
14 of the public peace, health, or safety, or support of the state
15 government and its existing public institutions, and takes effect April
16 1, 2010.

17 NEW SECTION. **Sec. 1511.** Section 605 of this act expires July 1,
18 2011.

19 NEW SECTION. **Sec. 1512.** Section 606 of this act takes effect July
20 1, 2011.

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